

**Supplemental Schedule**

THE ATLANTA RAILROAD COMPANY, THE  
ATLANTA AND NORTH SE RAILWAY  
AND THE ATLANTA AND OHIO RAIL-  
ROADS, ALL OF ATLANTA.

THE ATLANTA RAILROAD COMPANY, INTERSTATE  
AND INTRASTATE, D. A. CHICKELL &  
CO.

APPROVED FOR THE SECRETARY OF THE UNITED STATES FOR  
THE DEPARTMENT OF MARITIME

FILED JUN 11 1944





# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 182

THE PENNSYLVANIA RAILROAD COMPANY, THE  
ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, THE BALTIMORE AND OHIO RAIL-  
ROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, D. A. STICKELL &  
SONS, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND

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[fol. 1]

[Caption omitted]

[fol. 2]

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND**

No. 2091 Civil Docket

THE PENNSYLVANIA RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, The Baltimore and Ohio Railroad Company, Charles M. Thomson, as Trustee of the Property of the Chicago and North Western Railway Company, a Corporation; Chicago, Milwaukee, St. Paul and Pacific Railroad Company, (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, Trustee Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company

vs.

UNITED STATES OF AMERICA

DOCKET ENTRIES

1943

- Nov. 4. Petition under the provisions of the Interstate Commerce Act, filed.
- Nov. 4. Summons issued ret'ble 60 days after service. (Summons U. S. Attorney personally—also Attorney General of U. S. and Interstate Commerce Commission by registered mail.—5 November 1943).
- Dec. 17. Intervention of Interstate Commerce Commission, fd.
- Dec. 17. Answer of Interstate Commerce Commission, fd. (Service admitted).



1943

- Dec. 31. Motion of D. A. Stickell and Sons, Inc. to intervene herein and Order of Court thereon granting leave and that to plead or answer on or before January 15, 1944, filed.
- Dec. 31. Answer of The United States of America and Certificate of Service, filed.
- Dec. 27. Order of Court requiring respondent to show cause on 26th January 1944 at 10 A. M. why the application for an interlocutory injunction should not issue and directing copies of order and petition be served as therein provided filed. (3 copies of each sent to be served.)  
[fol. 3] (Served Bernard J. Flynn, U. S. Attorney, personally also Interstate Commerce Commission and The Attorney General of U. S. by registered mail—7th January 1944).
- Dec. 27. Order of Court convening Three Judge Statutory Court filed.

1944

- Jany. 7. Answer of Intervener, D. A. Stickell & Sons, Inc., filed.
- Jany. 31. Reply Brief for United States, filed.
- Mar. 2. Opinion of Court, filed.
- Mar. 22. Application of Petitioners for stay pending Appeal, filed.
- Mar. 22. Order of Court that the Order of the Interstate Commerce Commission, as amended, and the operation and enforcement thereof, be stayed and suspended pending the perfection of Petitioner's Appeal and fixing security for damages and costs on Appeal in the sum of \$5,000.00 filed.
- Mar. 22. Bond staying Order of Interstate Commerce Commission pending Appeal, filed.
- Mar. 22. Final Decree dismissing the Complaint for want of equity at petitioners costs, filed.
- May 15. Petition of Pennsylvania Railroad Company, et al for Appeal, filed.
- May 15. Assignment of Errors, filed.
- May 15. Jurisdictional Statement under Rule 12, of Revised Rules of Supreme Court, filed.
- May 15. Order of Court allowing appeal, filed.

1944

- May 15. Citation issued. (Service admitted--15 May 1944.)
- May 15. Approved Appeal Bond filed.
- May 15. Notice of Appeal, filed. (Service admitted by Atty. Gen.—State of Md.)
- May 15. Notice of Appeal to the United States of America, Interstate Commerce Commission and D. A. Stickell & Sons, Inc., filed. (Service admitted).
- May 15. Statement by Petitioners—Appellants directing attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court, filed. (Service admitted.)

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- May 15. Petitioners-Appellants Praecipe for Transcript of Record, filed. (Service admitted)
- May 15. Order of Court, directing the documents and papers covered by the three certificates of the Secretary of Interstate Commerce Commission which were received in evidence in the trial, be forwarded, in lieu of copies to the Clerk of the Supreme Court as a part of the Transcript of Record, filed. (Service admitted.)
- May 19. Admission of Service of Petition for Appeal &c. by D. A. Stickell & Sons, Inc., filed.

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 8] PETITION—Filed November 4, 1943

To the Honorable the Judges of the District Court of the United States for the District of Maryland:

Come now The Pennsylvania Railroad Company and the other petitioners and allege as follows:

# I

The petitioners herein are the following:

The Pennsylvania Railroad Company, herein termed the Pennsylvania, which is a corporation organized and

existing under the laws of the Commonwealth of Pennsylvania and a citizen of said Commonwealth, with its principal office at Philadelphia, Pennsylvania.

The Atchison, Topeka and Santa Fe Railway Company, a corporation of the State of Kansas.

The Baltimore and Ohio Railroad Company, herein termed the Baltimore & Ohio, a corporation of the States of Maryland and Virginia.

Charles M. Thomson, Trustee of the property of The Chicago and North Western Railway Company, a corporation of the State of Illinois and other States.

Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation of the State of Wisconsin.

Louisville and Nashville Railroad Company, a corporation of the State of Kentucky.

G. W. Webster and Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Railway Company, [fol. 9] pany, a corporation of the States of Minnesota, Wisconsin, and Michigan.

Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, a corporation of the State of Missouri.

The New York Central Railroad Company, a corporation of the State of New York and other states.

The Pittsburgh and Lake Erie Company, a corporation of the Commonwealth of Pennsylvania.

Southern Railway Company, a corporation of the State of Virginia.

Wabash Railroad Company, a corporation of the State of Ohio, successor in interest to Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers).

## II

Petitioners are common carriers of property by railroad subject to the Interstate Commerce Act, hereinafter referred to as the Act. They bring this their petition in behalf of themselves and in behalf of such other persons or corporations as have an interest herein and may by proper proceedings become parties hereto.

## III

This is a suit brought under the provisions of Acts of Congress approved June 18, 1910 (36 Stat. 539), March 3, 1911 (36 Stat. 1148), and October 22, 1913 (38 Stat. 219), Title 28 U. S. Code, Sections 41 (28) and 43 to 48, inclusive, and under the provisions of the Act of Congress approved September 18, 1940 (54 Stat. 916) Title 49 U. S. Code, Sec-[fol. 10] tion 17 (9) to enjoin, set aside, annul, and suspend the order of the Interstate Commerce Commission, entered in its Docket No. 28647, *D. A. Stickell & Sons, Inc. v. The Alton Railroad Company et al.*, on March 18, 1943, 255 I. C. C. 333. The jurisdiction of this Court depends upon the aforesaid statutes and its general equity jurisdiction, and the United States of America is made defendant herein by authority of the said statutes. The amount of the controversy herein exceeds as to each petitioner the sum of Three Thousand Dollars (\$3,000) exclusive of interest and costs.

## IV

The venue of this suit is laid in the District of Maryland pursuant to Title 28 U. S. Code, Section 43. The order of the Interstate Commerce Commission, herein termed the Commission, which is herein sought to be enjoined, set aside, annulled, and suspended, was made in a proceeding instituted upon the petition of D. A. Stickell & Sons, Inc., herein termed complainant, a corporation of the State of Maryland, engaged in the milling and mixing of grain, grain products, and grain by-products, and in the manufacture of mixed livestock and poultry feeds at Hagerstown, Maryland. A copy of the petition or complaint in the said proceeding before the Commission is annexed hereto as Exhibit "A" and made a part hereof.

## V

The said complaint was filed with the Commission on April 9, 1941. The Commission thereupon served said complaint on the railroads named therein as defendants, including petitioners herein or their predecessors in interest, and after joinder of issue by the filing of answers [fol. 11] or, pursuant to the provisions of Rule IV (b) of the Rules of Practice of the Commission, by failure to file an answer, the Commission entered upon an investigation



of the matters complained of, hearings were had before an Examiner of the Commission, briefs were filed, oral argument was had before the Commission (Division 2), and thereafter, on March 18, 1943, the Commission (Division 2) made and entered its report containing its findings and conclusions, and as of the same date made and entered its corrected order. A copy of said report is attached hereto as Exhibit "B", and a copy of said corrected order of March 18, 1943, herein termed the order of March 18, 1943, is attached as Exhibit "C", and both are made a part hereof.

## VI

By its terms the said order of March 18, 1943, was made to become effective June 28, 1943, upon 30 days' notice, and thereby required the railroads named as defendants therein, according as they participated in the transportation, to establish the prescribed joint rates over the prescribed through routes by appropriate tariffs filed with the Commission not less than thirty days prior to the said effective date. Before said order had become effective, and in accordance with the provisions of Section 17(8) of the Act, Title 49 U. S. Code, Sec. 17(8), and the rules and regulations of the Commission, the defendant railroads (other than Western Maryland Railway Company), herein termed defendant railroads, filed their petition for reargument and reconsideration of the said report and order of the Commission (Division 2) of March 18, 1943, and for the stay or postponement of said order, pursuant to the [fol. 12] provisions of Section 17(8) of the Act, pending disposition of the matter by the Commission. Pursuant to said provisions the Commission (Commissioner Aitchison) by orders dated May 24, 1943, and July 20, 1943, modified the said order of March 18, 1943, so as to become effective on August 28, 1943, and October 28, 1943, respectively, on 30 days' notice. By order of October 4, 1943, the Commission denied, without report, the petition filed by defendant railroads for reargument and reconsideration as aforesaid. A copy of the Commission's order of October 4, 1943, denying said petition for reargument and reconsideration, is attached as Exhibit "D". Upon defendants' request therefor, the Commission (Commissioner Aitchison), by order of October 16, 1943, further modified the

said order of March 18, 1943, so as to become effective on December 17, 1943, upon 30 days' notice. As a result of the several said orders the defendants in the proceeding before the Commission, including petitioners herein, are presently required to file with the Commission, not later than November 17, 1943, tariffs establishing the prescribed joint rates over the prescribed through routes to become effective not later than December 17, 1943.

## VII

The said complaint before the Commission, as amended at the hearing, invoked the Commission's power under Section 15 of the Act, Title 49 U. S. Code, Sec. 15, to require the establishment of through routes and joint rates on grain, grain products, and grain by-products from points of origin in the States of Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, and Missouri, and from Omaha, Nebraska, to Hagerstown, Md., for mixture at that point [fol. 13] into live stock and poultry food, and for reshipment thence to destinations on the lines of The Pennsylvania Railroad Company, herein termed the Pennsylvania, east of York, Pa., and Fulton Junction (Baltimore) Md., and between New York, N. Y., and Cape Charles, Va., inclusive, and particularly to destinations in the so-called Del-Mar-Va peninsula, herein termed the Peninsula, the latter being that part of Delaware, Maryland, and Virginia south of Wilmington, Del., and between the Chesapeake and Delaware Bays.

## VIII

Complainant manufactures livestock and poultry feed at Hagerstown, Md., by milling and mixing grain, grain products, and various by-products obtained principally from grain elevators, grain mills, vegetable oil mills, and food-manufacturing plants in Kansas, Missouri, Minnesota, Idaho, Illinois, Indiana, and Ohio. The bulk of its production moves to New England, eastern Pennsylvania, Delaware, and the Peninsula. About 50 or 60 percent of its production and about 90 percent of that part thereof that is handled by the Pennsylvania moves to points on the Peninsula. The Pennsylvania is the only railroad serving these points.

## IX

Joint through rates apply from points of origin in Central territory and from the market points, Chicago, East St. Louis, and Cairo, Ill., and St. Louis, Mo., to all points in trunk-line territory. Central territory is generally that territory west of Buffalo, N. Y., and Pittsburgh, Pa., north of the Ohio River, east of the above-named market points, and south of the Great Lakes. Said joint through [fol. 14] rates are restricted by the carriers to apply over certain routes. For example, they do not apply on traffic originating in Central territory or west thereof destined to points on the Pennsylvania, unless the Pennsylvania receives the traffic at or west of Pittsburgh or Buffalo. Transit arrangements, such as that covering the milling of grain or mixing of feed, are maintained on grain, grain products, and by-products at points directly intermediate over the tariff routes at the through rates, plus a transit charge, and at some points not directly intermediate at the through rates, plus a transit charge and an out-of-line or back-haul charge.

## X

The Baltimore & Ohio and the Pennsylvania maintain transit arrangements at Hagerstown restricted, as they are at other points in trunk-line territory on their lines, to traffic originated by them at or west of, or received by them from their connections west of, their trunk-line western termini, such as Buffalo and Pittsburgh. Trunk-line territory is generally that territory east of Central territory and west of New England, New York, N. Y., and Norfolk, Va. The routes of the Baltimore & Ohio and the Pennsylvania through Hagerstown embrace out-of-line hauls of 48 and 149 miles respectively. The Pennsylvania's out-of-line haul is from its Enola Yard, which is across the Susquehanna River from Harrisburg, Pa., to Hagerstown and return. Charges in addition to the joint through rates apply for the out-of-line service. The Pennsylvania's charge is 4.5 cents per 100 pounds for its out-of-line haul or back-haul, which charge, in addition to the transit charge, applies on complainant's shipments to eastern destinations [fol. 15] on the Pennsylvania. Complainant's plant is on the tracks of the Western Maryland Railway, but the Penn-

sylvania absorbs the Western Maryland's switching charge of \$6.93 per car each way.

## XI

The complainant before the Commission did not question the reasonableness of the Pennsylvania's out-of-line charge when such service was performed, but the objective of its complaint was to escape such charge through the prescription of through routes via Hagerstown which would not involve out-of-line service.

## XII

The evidence before the Commission showed and the Commission in its report of March 18, 1943, found:

"Both parties use Chicago as a representative origin and Salisbury, Md., as a representative destination, and the places will be so used here. The distance over the short tariff route of the Pennsylvania between those points is 902 miles. Its haul from Fulton Junction is 155 miles and from York 174 miles. The distance over route 1 via Fulton Junction is 946 miles and via York 958 miles, and over route 2 via Fulton Junction 938 miles and via York 950 miles. It is evident that the Pennsylvania's direct route is not unreasonably long and that the prescription of either route 1 or 2 would require the Pennsylvania to embrace in such route substantially less than the entire length of its railroad which lies between the termini of such route."

[fol. 16]

## XIII

In the report of the Commission (Division 2), herein termed the report of the Commission, the Commission concluded that the routes sought by the complainant were necessary and desirable in the public interest, but in view of the provisions of Section 15(4) of the Act, 49 U. S. Code, Sec. 15(4), stated that "The question of whether the Commission is precluded from prescribing the routes sought depends on whether those routes are needed in order to provide adequate and more efficient or adequate and more economic transportation."



## XIV

Concerning the adequacy, efficiency, and economy of the present routes of the Pennsylvania, the record showed and the Commission found:

"The Pennsylvania \* \* \* maintains scheduled fast trains that operate frequently over direct routes, that do not go through Hagerstown, from the rate-break points and origins on its line and from its junctions with other carriers in central territory to the destinations here considered. Its main routes from the west are via Pittsburgh and its Enola yard, which is across the Susquehanna River from Harrisburg. Traffic moving north, south, and east from Harrisburg is classified at that yard. An average of 65 scheduled trains and in addition thereto extra sections of those trains, extra trains, and local trains move into and out of that yard each day. Grain handled by the Pennsylvania moving to and from Hagerstown moves through that yard. Three scheduled trains operate each way daily between Enola yard and Hagerstown, and additional [fol. 17] sections and extra trains are used when needed. There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations."

## XV

The Commission further found:

"Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers' standpoint."

## XVI

Uncontroverted testimony of a competent railroad operating officer, testifying in the proceeding before the Com-

mission, established that the movement of a car from Hagerstown via the Western Maryland and through York or Fulton Junction to Salisbury, Md., or Cape Charles, Va., destinations on the Peninsula, would require a longer time than over the route of the Pennsylvania from Hagerstown through Enola Yard, but the Commission failed to find accordingly, merely characterizing the statement as "opinion", and disregarded this evidence upon the erroneous assumption that it was unreliable because the witness, although not asked or given an opportunity to do so, did not explain why the disadvantage in time of the Western Maryland [fol. 18] land routes as compared with that of the Pennsylvania was greater in the case of Cape Charles than in the case of Salisbury.

## XVII

The uncontroverted evidence of record showed that to Milford, N. J., designated by complainant as typical of destinations on the Pennsylvania in New Jersey to which it desired new through routes established, and to which the Commission's order of March 18, 1943, prescribes through routes, the movement of a car from Hagerstown via Fulton Junction would be approximately one day slower than over the existing route of the Pennsylvania. The uncontroverted evidence of record also showed that to Chatham, Pa., designated by complainant as typical of destinations in eastern Pennsylvania on the Pennsylvania Railroad to which it desired new through routes established and to which the Commission's order of March 18, 1943, prescribes through routes, a car moving from Hagerstown via Fulton Junction would have to move over the Pennsylvania into Philadelphia and thence to Avondale, Pa., or to Enola Yard via Lancaster, Pa., to Avondale, in either of which instances the movement would be more circuitous and for a greater length of haul than over the existing route of the Pennsylvania from Hagerstown through Enola Yard. The Commission, however, made no findings in accordance with this evidence, but erroneously disregarded it and made its ultimate findings contrary thereto.

## XVIII

The uncontroverted evidence before the Commission established that, due to physical limitations and operating

[fol. 19] conditions on the Pennsylvania incident to the interchange between the Western Maryland and the Pennsylvania at York and Fulton Junction, including the movement through the Baltimore tunnels to Bay View Yard (Baltimore) when Fulton Junction is used, neither of these junctions would be satisfactory, from the standpoint of railroad operation, as interchange points on this traffic, and that neither would be as adequate, efficient, or as economic as the interchange between the Western Maryland and the Pennsylvania at Hagerstown, incident to the use of the route of the Pennsylvania from Hagerstown to destination, but except for finding that the interchange tracks at York and Fulton Junction "are now used to near, and sometimes to full, capacity," the Commission failed to find in accordance with the facts of record but contrary thereto found that the evidence did not show "that those conditions are any more difficult than the operating difficulties encountered at Hagerstown."

## XIX

The ultimate findings contained in the Commission's report of March 18, 1943, and its order of the same date, are predicated in part upon its finding and holding that the Pennsylvania "has failed to perform its duty" (under Title 49 U. S. C. 1940 ed., Sec. 3(4) "to afford all reasonable, proper, and equal facilities for the interchange of traffic" with the Western Maryland at York and Fulton Junction, although no such issue was raised by the complaint or at the hearing, nor was any notice given the parties that such issue would be tried, nor was such issue tried before the Commission.

[fol. 20]

## XX

The defendant railroads before the Commission introduced a cost study showing the comparative costs of transportation over the proposed routes, including routes which the Commission has now prescribed through York and Fulton Junction, and over existing routes of the Pennsylvania, including its direct route and also its route involving out-of-line movement via, and transit at, Hagerstown. The said costs were based on data reported to the Commission by the carriers involved for the year 1940, and were computed, with some modifications, according to a formula

prepared by the Commission's Bureau of Statistics. Typical of the costs so shown were the following:

[fol. 21]

#### COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Through Carload Movement of 33 Tons in Box-Car Equipment from Chicago, Ill., to Salisbury, Md.—Year 1940)<sup>1</sup>

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R. direct.....	902	\$121.07	\$229.93
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R. <sup>1</sup> .....	958	165.81	327.85
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R. <sup>2</sup> .....	938	206.23	358.49

#### COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Carload Movement of 33 Tons from Chicago, Ill., to Hagerstown, Md., and of 1.34 cars of Outbound Products at 24.6 Tons Per Car to Salisbury, Md.—Box Car Equipment—Year 1940).

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R.....	1051	\$184.10	\$349.65
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R. <sup>1</sup> .....	958	191.18	377.64
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R. <sup>2</sup> .....	938	232.08	409.32

<sup>1</sup> This is a typical example of the route referred to in the report and order of the Commission of March 18, 1943, as route 1, which embraces the use of the New York Central to Youngstown, Ohio, and the Pittsburgh & Lake Erie up to Connellsville, Pa.

<sup>2</sup> This is a typical example of the route referred to as route 2, which embraces the use of the Wabash to Toledo, Ohio, the Wheeling & Lake Erie to Pittsburgh Junction, Ohio, and the Pittsburgh & West Virginia up to Connellsville, Pa.

[fol. 22] The cost data so introduced were uncontroverted and established that whether comparison were made of the proposed routes which the Commission has now prescribed with the direct route of the Pennsylvania, or with the Pennsylvania's route involving out-of-line service via and transit at Hagerstown, the costs of transportation via the routes now prescribed would be greater. The Commission failed to make any finding in accordance with this uncontroverted evidence, and failed to make any finding concerning the comparative costs of transportation over the routes which

it has prescribed as compared with those over the existing routes. The Commission disregarded the said cost data on the stated ground that "its value, if any, is limited to average system costs of all less-than-carload and carload freight, while here we are dealing with a heavy loading commodity moving comparatively longer distances in well defined channels," although the record showed that the system costs for each road had been treated in accordance with the said formula of the Commission's Bureau of Statistics which provided adjustments for differences in length of haul, that costs applicable to less-carload traffic had been eliminated from the study, and that complainant's traffic was not "heavy loading" as compared with the average load of revenue carload freight for the railroads involved in the routes prescribed.

## XXI

The Commission made no finding that the existing direct routes of the Pennsylvania, or the existing routes of the Pennsylvania via Hagerstown which involve out-of-line service, were not adequate, or did not furnish adequate [fol. 23] transportation; and its ultimate finding that the routes which it has prescribed are needed to provide adequate transportation is not supported by substantial evidence but is contrary to the record.

## XXII

The Commission made no finding that the routes which it has prescribed would be more efficient or more economic from the standpoint of railroad transportation or operation; and its ultimate finding that the routes which it has prescribed are needed to provide "more efficient" and "more economical transportation" is not supported by substantial evidence but is contrary to the record.

## XXIII

The Commission found:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junc-

tion thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola Yard heretofore described."

[fol. 24] Predicated upon these findings the Commission made its ultimate finding as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

#### XXIV

No railroad, which was a defendant in the proceeding before the Commission or which is a petitioner herein, consented that the Commission might require, as it has done by its order of March 18, 1943, that such railroad participate in through routes which embrace "substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such \* \* \* through routes," which is to say to require such railroad to "short-haul" itself.

#### XXV

The said order of March 18, 1943, is beyond the statutory power of the Commission in that, in violation of the provisions of Section 15(4) of the Act, Title 49 U. S. Code, Sec. 15(4), the Commission therein and thereby has required [fol. 25] and does require one or more defendant railroads, including one or more of petitioners herein, without their consent, to participate in the prescribed new through routes, which embrace substantially less than the entire length of



their several railroads and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lie between the termini of such through routes, and thereby to short-haul themselves, without having made a precedent and valid finding that the through routes prescribed are "needed in order to provide adequate, and more efficient or more economic, transportation."

#### XXVI

The said order of March 18, 1943, is beyond the statutory power of the Commission, in that in violation of the provisions of Section 15(4) of the Act the Commission has therein and thereby required one or more defendant railroads, including one or more petitioners herein, without their consent, to participate in the prescribed new through routes which short-hauled them, without having found, as a prerequisite, that the prescribed routes will be more efficient or more economic of operation than existing routes.

#### XXVII

The said order of March 18, 1943, is beyond the statutory power of the Commission, in that the Commission is not empowered to require, as it does in said order, one or more defendant railroads, including one or more petitioners herein, without their consent, to participate in new through routes which short-haul them, upon a mere finding that the prescribed through routes will be more efficient or more [fol. 26] economic from the standpoint of a shipper, and without regard to whether such through routes will be more or less efficient or economic of railroad operation.

#### XXVIII

The said order of March 18, 1943, is beyond the statutory power of the Commission in that therein and thereby, contrary to the provisions of Section 15(4) of the Act, the Commission has required one or more defendant railroads, including one or more of petitioners here, without their consent, to participate in new through routes which short-haul them, without a precedent finding that the prescribed through routes are "needed in order to provide adequate, and more efficient or more economic, transportation" between the termini of such through routes.



## XXIX

The said orders of March 18, 1943, is beyond the statutory power of the Commission in that, having found that the existing direct through routes of the Pennsylvania between the termini of said through routes were adequate and provided adequate transportation between said termini, the Commission was not empowered to prescribe the new through routes which it has ordered, and which short-haul one or more defendant railroads, including one or more petitioners herein, without their consent.

## XXX

The said order of March 18, 1943, is based upon a mistake of law in that the ultimate finding on which it rests—that the prescribed through routes “are needed to provide adequate and more efficient and adequate and more economical transportation”—is predicated upon the erroneous assumption that the Commission is empowered by Section 15(4) of the Act to require railroads, without their consent, to participate in new through routes which short-haul them, upon a mere showing that such routes will be more advantageous or will result in a lower rate to a transit operator situated between the termini of the through routes and without regard to whether they will be more efficient or more economic of operation than existing through routes.

## XXXI

The said order of March 18, 1943, is based upon a mistake of law in that it is based upon the erroneous assumption on the part of the Commission that it was entitled under Section 15(4) of the Act to require defendants before it, including one or more petitioners herein, without their consent, to join in the establishment and operation of new through routes which would short-haul them, without having found or having made a precedent finding that such new through routes were needed in order to provide adequate, and more efficient or more economic, transportation between the termini of such through routes.

## XXXII

The order of the Commission of March 18, 1943, is based upon a mistake of law in that in making it the Commis-

sion erroneously assumed that it was empowered to prescribe additional through routes which short-hauled defendant railroads without their consent if needed in order to provide adequate, and more efficient or more economic, transportation from the standpoint of the shipper, even though less adequate, and less efficient or less economic, from the standpoint of railroad operation.

[fol. 28]

### XXXIII

The said order of March 18, 1943, is arbitrary, capricious, and without warrant in law, in that it rests upon a finding that the prescribed new through routes "are needed to provide adequate and more efficient and adequate and more economical transportation," although the uncontradicted evidence of record shows that the existing routes provide adequate transportation and that the routes prescribed are less efficient and less economic of operation than existing routes.

### XXXIV

The said order of March 18, 1943, and the ultimate finding of the Commission on which it rests, are without support in the evidence and are contrary to the evidence, and accordingly are arbitrary and without warrant in law.

### XXXV

The said order of March 18, 1943, is arbitrary and without warrant of law in that in making it the Commission did not observe the essentials of a fair hearing and the requirements of due process but disregarded defendants' uncontroverted evidence, which was competent, relevant, and material to the issues before it, and made findings not supported by the evidence but contrary to the evidence, all in violation of the Fifth Amendment to the Constitution of the United States.

### XXXVI

The said order of March 18, 1943, is arbitrary and without warrant in law, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it is predicated in part upon findings [fol. 29] as to the adequacy, efficiency, and economy of the prescribed routes which rest not upon the evidence but upon a finding that the Pennsylvania, one of the defendants, and

a petitioner herein, failed to perform its duty, under Section 3(4) of the Act, Title 49 U. S. C. 1940 ed. Sec. 3(4), to afford all reasonable, proper, and equal facilities for the interchange of traffic with the Western Maryland, although no issue under that section was presented or tried, and no notice was given of any such issue to be heard or determined.

### XXXVII

The said order of March 18, 1943, is based upon a mistake of law in that the Commission in making the findings upon which it rests erroneously assumed that, in determining the relative efficiency and economy of proposed and existing routes, it might disregard evidence that the proposed routes involved the use of interchange points not consistent with efficient and economic operation on the ground that any such inefficient or uneconomic operation constituted a failure on the part of the railroads involved to perform their duty under Section 3(4) of the Act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines.

### XXXVIII

The said order of March 18, 1943, is arbitrary and without warrant in law in that in prescribing through routes via Fulton Junction the Commission, acting without support in the evidence and contrary to the evidence found that the evidence does not show that the operating conditions at Fulton Junction are any more difficult than at Hagerstown.

[fol. 30]

### XXXIX

The said order of March 18, 1943, is arbitrary and without warrant in law in that the findings of greater efficiency and greater economy on which it rests is without support in the evidence and is directly contrary to the evidence which shows that to typical destinations the service over the prescribed routes would be slower than over the existing routes.

### XL

The said order of March 18, 1943, is based upon a mistake of law in that the Commission's finding that the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, rests upon the fact that

complainant shipped certain cars from Hagerstown over the Western Maryland and Reading railroads to Elsmere Junction, Del., and thence by truck to destinations on the Peninsula, although Section 15(4) of the Act does not contemplate the comparison of rail-truck routes with all-rail routes, and although such a comparison does not meet the statutory requirement of clause (b) of said section.

## XLI

The said order of March 18, 1943, is arbitrary and without warrant in law in that it rests in part upon findings, which are not supported by the record but are contrary to the record, that the prescribed routes would not short-haul any defendants other than the Pennsylvania and that the Pennsylvania is the only carrier that would participate in those routes that invokes the short-hauling provision.

[fol. 31]

## XLII

Petitioners, although they firmly believe, and are so advised by counsel, that the said orders are unlawful and void, may not, nevertheless, safely fail, on and after November 17, 1943, to obey said orders, and if petitioners should do so and the order of March 18, 1943, should thereafter be held valid in any respect, petitioners and each of them would be subject to the heavy penalty of Five Thousand Dollars (\$5,000) for each day each violation thereof may continue, as provided in Section 16(8) of the Interstate Commerce Act, 49 U. S. Code, Sec. 16(8), and the petitioners would suffer irreparable injury and damage for which there is no remedy at law.

Wherefore, petitioners, being without adequate remedy at law, respectfully pray:

*First:* That upon the filing of this petition, the Judge of this Court shall call to his assistance, in the hearing and determination of this cause, two other Judges, of whom at least one shall be a Circuit Judge;

*Second:* That process may issue against the defendant United States of America;

*Third:* That after not less than three days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided by law, a hearing shall

be held, and a temporary stay or suspension of the order of the Interstate Commerce Commission in its Docket No. 28647, dated March 18, 1943, be issued pending hearing and determination of petitioners' application for interlocutory and permanent injunctions, for the duration of sixty days.

*Fourth:* That after not less than five days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided by law, a hearing shall be held, and an interlocutory injunction be issued staying and suspending the said order of the Interstate Commerce Commission.

*Fifth:* That on final hearing of this cause a decree be entered herein, enjoining, setting aside, annulling, and suspending the said order of the Interstate Commerce Commission and permanently enjoining the enforcement, execution, and operation thereof.

*Sixth:* That this Court grant to the petitioners such other and further relief as by it may be deemed proper in the premises.

Respectfully submitted, Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners; H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor, of Counsel.

November 4, 1943.

[fol. 33] *Duly sworn to by John B. Large. Jurat omitted in printing.*

[fol. 34]

## EXHIBIT "A" TO PETITION

Before the Interstate Commerce Commission

Docket No. 28647

D. A. STICKELL &amp; SONS, INC., Complainant,

vs.

THE ALTON RAILROAD COMPANY,  
Alton and Southern Railroad,  
The Atchison, Topeka and Sante Fe Railway Company,  
The Baltimore and Ohio Railroad Company,  
The Belt Railway Company of Chicago,  
The Chesapeake and Ohio Railway Company,  
Chicago and Eastern Illinois Railroad Company,  
Chicago & Illinois Midland Railway Company,  
Chicago and North Western Railway Company (Charles  
M. Thomson, Trustee),  
Chicago, Burlington & Quincy Railroad Company,  
Chicago Great Western Railway Company,  
Chicago, Indianapolis and Louisville Railway Company  
(Holman D. Pettibone, Trustee),  
Chicago, Milwaukee, St. Paul and Pacific Railroad Com-  
pany (Henry A. Scandrett, Walter J. Cummings and  
George I. Haight, Trustees),  
The Chicago, Rock Island and Pacific Railway Company  
(Frank O. Lowden, James E. Gorman and Joseph B.  
Fleming, Trustees),  
Chicago South Shore and South Bend Railroad,  
[fol. 35] The Detroit and Toledo Shore Line Railroad Com-  
pany,  
Detroit, Toledo and Ironton Railroad Company,  
Elgin, Joliet and Eastern Railway Company,  
Illinois Central Railroad Company,  
Indiana Harbor Belt Railroad Company,  
Louisville and Nashville Railroad Company,  
The Minneapolis & St. Louis Railroad Company (L. C.  
Sprague, Receiver),  
Minneapolis, St. Paul & Sault Ste. Marie Railway Company  
(G. W. Webster and Joseph Chapman, Trustees),  
Missouri Pacific Railroad Company (Guy A. Thompson,  
Trustee),  
The New York Central Railroad Company,  
The New York, Chicago and St. Louis Railroad Company,



The Pennsylvania Railroad Company,  
 Pere Marquette Railway Company,  
 The Pittsburgh and Lake Erie Railroad Company,  
 The Pittsburgh & West Virginia Railway Company,  
 Southern Railway Company,  
 Toledo, Peoria & Western Railroad,  
 Wabash Railway Company (Norman B. Pitcairn and Frank  
 C. Nicodemus, Jr., Receivers),  
 Western Maryland Railway Company,  
 The Wheeling and Lake Erie Railway Company,  
 The Cleveland, Cincinnati, Chicago and St. Louis Railway  
 Company (The New York Central Railroad Company,  
 Lessee),  
 The Michigan Central Railroad Company (The New York  
 Central Railroad Company, Lessee), Defendants

[fol. 36]

## Complaint

## I

The complainant is a corporation engaged in milling, mixing of grain, grain products and grain by-products and in the manufacture of mixed live stock and poultry feeds, at Hagerstown, Maryland. Complainant draws its materials generally from territories of production in the west and after manufacturing the products therefrom at Hagerstown ships said products to points of consumption, many of which are located in Eastern Trunk Line and New England territories.

## II

That the defendants above named are common carriers engaged in the transportation of property wholly by railroad between points in the States of Maryland, Pennsylvania, New Jersey, New York and points in other states of the United States, and the District of Columbia, and as such common carriers are subject to the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

## III

That the raw materials and products of complainant are as follows:

Barley, Buckwheat, Corn, Feterita, Kaffir Corn, Milo  
 Maize, Oats, Rye, Screenings (Grain), Speltz, Wheat,



Bran, in bulk (made from grain only), Bran in sacks (made from grain only), Clipped Oat By-Products (oat clippings), Corn and Oats Chop, Corn (cracked), Corn [fol. 37] (ground), Feed Barley (ground), Feed, Corn (ground), Feed Hominy, Feed, Mill, viz: Bran, Middlings, Ship Stuff, Shorts, mixed carloads, Feed, Oats (ground), Feed Rye (ground), Feed, Wheat (ground), Flour (made from grain only), Flour, Compound (self-rising flour), Hominy, Hulls, Barley, Buckwheat or Oats, Meal, Corn, Meal, Oat, Middlings, Oat Offal, Oats, Ground, Oats, Rolled, Screenings, consisting of a mixture of Offal and Wild Seed, cleaned from various grains, Wheat, Cracked, Cake Cottonseed Oil (ground), Cake, Linseed Oil (ground), Cake, Soya Bean (ground), Feed, Alfalfa, Feed, Animal, Poultry or Pigeon, Feed, Gluten, Meal, Alfalfa, Meal, Gluten, Meal, Linseed Oil, Meal, Soya Bean, Coconut (copra) Oil Cake Meal, Meal, Cob, Meal, Peanut Oil.

#### IV

Complainant is denied the application of reasonable through routes and joint rates and charges over the lines of defendants, and therefore petitions the Commission to exercise the power that is conferred upon it by Section 15 of the Interstate Commerce Act as amended, and establish through routes and joint rates and charges, and reasonable rules, regulations and practices applicable to the transportation of the commodities named in paragraph 3 hereof and milled, mixed into products at Hagerstown in transit, and destined to points in Trunk Line and New England territories. The tariffs involved, among others, are:

Central Freight Association, Tariff 470B, I. C. C. 3490, issued by B. T. Jones, Agent, Dearborn St., Chicago.

[fol. 38] Central Freight Association, Tariff 245G, I. C. C. 3356, issued by B. T. Jones, Agent, Dearborn St., Chicago.

Union Line Basing Book, Pennsylvania Railroad Company, I. C. C. 13.

Western Maryland Railway Company, Transit Tariff I. C. C. 8625, issued by the Western Maryland Railway Co., Baltimore, Maryland.

## V

While complainant draws grain and grain products from many points in the grain producing regions on the lines of defendants, an example of a reasonable route for the transportation of the traffic in question via Hagerstown to desired markets would be over what is generally termed the Pittsburgh Dispatch Route, substantially as follows: Commodities hereinbefore described, originating generally in Western Trunk Line and Central territories, on the New York Central Railroad and its connections, moving thence via that Railroad to the Pittsburgh and Lake Erie; thence via the Western Maryland through Hagerstown to York, Pennsylvania or to Fulton Junction, Baltimore, Maryland; thence via the Pennsylvania Railroad to destinations thereon down the Eastern Shore of Maryland, to Cape Charles, Virginia; and also to points on said Railroad and its connections in Eastern Pennsylvania and New Jersey, to New York City.

An illustration of another reasonable route for the transportation of the traffic in question via Hagerstown to desired markets would be substantially as follows: Commodities hereinbefore described originating on the Wabash Railroad and its connections, moving thence via that Railroad to the Wheeling and Lake Erie Railroad, the Pittsburgh and West Virginia Railroad; thence via the Western Maryland Railroad, through Hagerstown to York, or Fulton Junction, Baltimore, Maryland; thence via the Pennsylvania Railroad, to destinations hereinbefore described.

## VI

The commodities hereinbefore described originate at points on the lines of defendants of which the following are representative: Antwerp, Toledo, Grelton, Circleville, Napoleon, Painesville, and Chillicothe, Ohio; Kempton, Indianapolis; Decatur, and Kirklin, Indiana; Chicago, Belleville, Pekin, Rockford, Flagg Center, and Peoria, Illinois; Ottawa Lake, Michigan; Milwaukee, Wisconsin; Cedar Rapids, Burlington, Davenport, Vetter, Kamrar, Livermore, Florence, in the State of Iowa; New Prague, New Ulm, Minneapolis, Minnesota; Omaha, Nebraska; Kansas City, and St. Louis, Missouri.

Complainant desires to transport the said commodities from the region of which the foregoing points are representative, via the lines of defendants, through Hagerstown, as pointed out hereinbefore.

## VII

That by reason of the facts stated in the foregoing paragraphs complainant has been subjected to the payment of rates and charges, and to rules and practices of transportation which were when enacted and still are, unjust and unreasonable in violation of Section 1 and other provisions of the Interstate Commerce Act.

[fol. 40] Wherefore, complainant prays that defendants may be required to answer the charges herein; that after due hearing and investigation, an order be made commanding said defendants to cease and desist from the aforesaid violations of said act, and establish and put in force and apply in future to the transportation of the commodities named in paragraph 3 through Hagerstown on a transit practice, in lieu of the routes, rates, rules, practices and charges now in force, such other routes, rates, rules, practices and charges as the Commission may deem reasonable and just and nonprejudicial, and that such other and further order or orders may be made as the Commission may consider proper in the premises.

D. A. Stickell & Sons, Inc., by H. K. Stickell, Treasurer; C. R. Hillyer, Attorney for Complainant, Field Building, Chicago, Illinois.

Dated at Chicago, April 10, 1941.

[fol. 41] *Duly sworn to by H. R. Stickell. Jurat omitted in printing.*

[fol. 42]

## EXHIBIT "B" TO PETITION

INTERSTATE COMMERCE COMMISSION

No. 28647

D. A. STICKELL &amp; SONS, INC.,

v.

THE ALTON RAILROAD COMPANY, ET AL.

Submitted March 5, 1942. Decided March 18, 1943

Through routes from St. Louis, Mo., Chicago, East St. Louis, and Cairo, Ill., and origins in central territory via Hagerstown, Md., to destinations on the Pennsylvania Railroad Company east of York, Pa., and Fulton Junction (Baltimore), Md., and between New York, N. Y., and Cape Charles, Va., inclusive, prescribed.

*C. R. Hillyer* for complainant.

*Francis R. Cross* and *Joseph F. Eshelman* for defendants.

*R. V. Craig* for intervener.

## Report of the Commission

Division 2, Commissioners Aitchison, Splawn, and Alldredge.

## By Division 2:

Defendants filed exceptions to the report proposed by the examiner, complainant replied, and the proceeding was orally argued.

By complaint filed April 9, 1941, as amended at the hearing, it is alleged that complainant is denied reasonable through routes and joint rates on grain, grain products, and byproducts moving from origins in Ohio, Indiana, Illinois, [fol. 43] Wisconsin, Iowa, Minnesota, Omaha, Nebr., and Missouri to Hagerstown, Md., there mixed into livestock and poultry food, and the manufactured product reshipped to destinations on the lines of The Pennsylvania Railroad Company east of York, Pa., and Fulton Junction (Baltimore), Md., and between New York, N. Y., and Cape Charles, Va., inclusive, and particularly to destinations in

the so-called Del-Mar-Va peninsula, the latter being that part of Delaware, Maryland, and Virginia south of Wilmington, Del., and between the Chesapeake and Delaware Bays. We are asked to prescribe reasonable and nonprejudicial through routes and joint rates.

The complaint as originally filed sought through routes via Hagerstown to "points in trunk line and New England territories" and The Baltimore and Ohio Railroad Company was named as one of the defendants. The complaint was amended at the hearing so as to narrow the relief sought to through routes at the present joint rates to the described destinations on the Pennsylvania. The transit, rate, and restricted routing situation on the Baltimore & Ohio are substantially similar to those on the Pennsylvania and it fears that, if the relief here sought should be granted, a precedent will be established that will adversely affect its interests. Accordingly, it introduced considerable evidence and otherwise participated in the proceeding. The Western Maryland Railway Company does not oppose the complaint.

Complainant manufactures livestock and poultry feed at Hagerstown, Md., by milling and mixing grain, grain products, and various byproducts obtained principally from grain elevators, grain mills, vegetable oil mills, and food-[fol. 44] manufacturing plants in Kansas, Missouri, Minnesota, Idaho, Illinois, Indiana, and Ohio. It purchases considerable corn, barley, buckwheat, and wheat in the Cumberland Valley, thus affording a nearby market for grain grown in the vicinity of its plant. Its in-bound and out-bound tonnages, including a small quantity of articles that do not move on the grain rates, are each about 60,000 tons a year. About 10 percent of the materials used by it move in-bound and out-bound by truck, and 90 percent by rail. The bulk of its production moves to points in New England, eastern Pennsylvania, Delaware, and the Del-Mar-Va peninsula. About 50 or 60 percent of its production and about 90 percent of that part thereof that is handled by the Pennsylvania moves to points in the Del-Mar-Va peninsula. The Pennsylvania is the only railroad serving these points. In 1940, complainant shipped 675 cars out of Hagerstown via the Pennsylvania and 640 cars over lines of the Western Maryland to Shippensburg, Pa., thence the Reading Company to Elsmere Junction (Wilmington), Del., thence by motor vehicle to destinations on the Del-Mar-Va peninsula.

Complainant estimates the average loading of its in-bound shipments as 72,000 to 80,000 pounds, and that of its out-bound shipments as 46,000 pounds. The Pennsylvania shows that 217 in-bound cars handled by it during May, June, and July, 1940, averaged 66,044 pounds and that 383 out-bound cars handled by it during the period from December 1940 to May 1941 averaged 49,000 pounds.

Hagerstown is served by four railroads. It is about 79 miles east of Cumberland, Md., and about 87 miles west of Baltimore on the main line of the Western Maryland. It is the terminal of the line of the Norfolk and Western Railway [fol. 45] Company running from Roanoke, Va. It is also on a branch line of the Baltimore & Ohio 24 miles north of Weverton, Md., a main line point about 99 miles east of Cumberland, and 74.5 miles southwest of Harrisburg, Pa., on a branch line of the Pennsylvania extending from that point to Winchester, Va.

Joint through rates apply from origins to central territory and from the market points, Chicago, Ill., St. Louis, Mo., and East St. Louis and Cairo, Ill., to all points in trunk-line territory. The measure of those rates is not in issue. They are restricted by the carriers to apply over certain routes. For example, they do not apply on traffic originating in central territory destined to points on the Pennsylvania unless the Pennsylvania receives the traffic at or west of Pittsburgh, Pa. When the Pennsylvania has possession of traffic consigned to destinations on the following carriers, it is interchanged as follows: With The Central Railroad Company of New Jersey at Nanticoke, Pa.; The Delaware, Lackawanna and Western Railroad Company at Buffalo, N. Y.; the Erie Railroad Company at or west of Transfer, Pa.; the Lehigh Valley Railroad Company at Buffalo; the Reading at Harrisburg, Pa.; and the Western Maryland at Cumberland. Transit arrangements are maintained on grain, grain products, and byproducts at points directly intermediate over the tariff routes at the through rates, plus a transit change, and at some points not directly intermediate at the through rates plus a transit charge and an out-of-line charge. The general practice is that transit is permitted on a delivering line only when it receives the traffic at or west of the agreed junctions.

Transit at Hagerstown is applicable at the joint through rates from the markets and most of the origins in central



territory in connection with the Western Maryland from its [fol. 46] junctions west of Hagerstown with the Baltimore & Ohio at Cherry Run, W. Va., The Pittsburgh and Lake Erie Railroad Company and The Pittsburgh & West Virginia Railroad Company at Connellsville, Pa., The Chesapeake and Ohio Railway Company at Durbin, W. Va., and the Norfolk & Western at Hagerstown to points east of Hagerstown on the Western Maryland and over the Western Maryland from Hagerstown to Shippensburg and its connections beyond to destinations on the lines of the Central Railroad of New Jersey, Reading, The Delaware and Hudson Railroad Corporation, The Long Island Rail Road Company, The Staten Island Rapid Transit Railway Company, the Pennsylvania-Reading Seashore Lines, the Lehigh and New England Railroad Company, and The Lehigh and Hudson River Railway Company and to destinations Wilkes-Barre, Pa., and east on the Lehigh Valley, Alford, Pa., and east on the Delaware, Lackawanna & Western, to destinations in the Scranton district on lines of the Erie and the New York, Ontario and Western Railway Company, and to some destinations on the lines of the Bangor and Aroostook Railroad Company, the Maine Central Railroad, The New York, New Haven and Hartford Railroad Company, and the Boston and Maine Railroad.

The Baltimore & Ohio and Pennsylvania also maintain transit arrangements at Hagerstown restricted, as they are at other points in trunk-line territory on their lines, to traffic originated by them at or west of or received by them from their connections west of their trunk-line western termini. The routes of the Baltimore & Ohio and Pennsylvania through Hagerstown embrace cut-of-line hauls of 48 and 149 miles, respectively. The Pennsylvania's out-of-line haul is from its Enola yard (Harrisburg), Pa., to Hagerstown [fol. 47] and return. Charges in addition to the joint through rates apply for the out-of-line service. The Pennsylvania's charge is 4.5 cents per 100 pounds. Thus, in order to reach the destinations here in issue, complainant must pay 90 cents per ton in addition to the through rates and the transit charge. Its plant is on the tracks of the Western Maryland, but the Pennsylvania absorbs the Western Maryland's switching charge of \$6.93 per car each way.

Complainant does not assail the reasonableness of the through rates, the out-of-line charge, or the transit charge.



Its position is that it should not be required to pay an out-of-line haul charge in order that the Pennsylvania may obtain the long hauls from its trunk-line western termini. It desires establishment of the present joint through rates over two through routes, hereinafter referred to as routes 1 and 2, to destinations on the Pennsylvania: (1) From the markets and origins in central territory on The New York Central Railroad Company and its connections other than the Pennsylvania via New York Central to Youngstown, Ohio, Pittsburgh & Lake Erie to Connellsville, Western Maryland to Hagerstown, thence Western Maryland to York or Fulton Junction, and the Pennsylvania beyond; and (2) from the same markets and origins on the Wabash Railway Company and its connections other than the Pennsylvania in central territory via the Wabash to Toledo, Ohio, The Wheeling and Lake Erie Railway Company to Pittsburgh Junction, Ohio, Pittsburgh & West Virginia to Connellsville, Western Maryland to Hagerstown, thence Western Maryland to York or Fulton Junction, and the Pennsylvania beyond.

The joint through rates now apply over those routes up to Hagerstown with transit at that point, thence Western [fol. 48] Maryland to destinations on the Western Maryland and from Hagerstown over the Western Maryland to Shippensburg and its connections beyond, heretofore described.

The Baltimore & Ohio and Pennsylvania contend that complainant is at no substantial disadvantage because it has available "practically all of central territory" and western trunk-line territory from which it can ship to an extensive destination territory at the prescribed through rates with transit at Hagerstown, and because it has transit at Hagerstown at the through rates between points on the Norfolk & Western and other carriers in trunk-line territory and between points on the Chesapeake & Ohio and Delaware, Lackawanna & Western. They further show that other transit operators in trunk-line territory not on their direct routes have to pay either out-of-line charges in addition to the through rates or combination rates to destinations on their lines, and that destinations to which transit operators on other lines can ship at the through rates are restricted.

It is not the province of railroads to determine what markets shall be available to sellers or buyers, or, by the refusal to establish through routes or the maintenance of rate disadvantages, to restrict or circumscribe the opportunities of shippers located on other railroads to sell in markets served by them. It is their function to transport in the channels necessitated by trade conditions and not to fix limitations on commerce. The public interest demands that all shippers be accorded relatively equal opportunities to reach all reasonably available markets. The margin of profit on complainant's products is small. The two principal items entering into the selling price are the [fol. 49] amounts paid for the materials and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, N. Y., Fort Wayne and Indianapolis, Ind., Cincinnati, Toledo, Cleveland, and Akron, Ohio, and Pittsburgh, Lancaster, and York, Pa., can reach the destinations here considered at the through rates, but complainant, on grain purchased at the same origins when the Pennsylvania gets the in-bound haul from or beyond its trunk-line western termini, must pay 90 cents a ton more, or, when other carriers perform the in-bound haul, combination rates. Clearly complainant is at a disadvantage.

The Baltimore & Ohio and Pennsylvania contend that a "logical and equal extension of the principle" here involved would result in wasteful cross hauling, "seriously affect the entire structure of rates on grain and grain products subject to transit in trunk-line territory," and materially reduce their revenues received from out-of-line hauls. It is not necessary to determine here whether defendants' apprehensions are well founded. It will suffice to say that, even if they were, that would be no reason for denying complainant just and reasonable through routes at the established joint rates. The routes sought up to Hagerstown are well established and generally accepted as reasonable by shippers and the carriers parties thereto to points in eastern territory. There is no showing or contention that those routes would be less economical as parts of the through routes sought to destinations considered on the Pennsylvania than to destinations on the other carriers in eastern territory. The routes sought in connection with the Pennsylvania would not only not result in any cross hauling or wasteful transportation, but they would eliminate a 149-mile out-of-line haul and two switching

interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown. The Western Maryland would bear all the transit and switching expenses at that point.

The Pennsylvania also contends that the routes sought are not "necessary and desirable" in the public interest because of the fact that "the complaint was not supported by any shipper of grain or its products at points of origin, by any receiver of mixed feed at destinations or by producers or consumers of grain in the Cumberland Valley" and because of the fact that "upon the record there is no basis for assuming that any of these are dependent upon the transit operation being performed at Hagerstown."

In *Cancellation of Rates and Routes via Short Lines*, 245 I. C. C. 183, the Commission said: "The words 'necessary and desirable' do not in either case connote indispensability." In *Flory Milling Co. v. Central New England Ry. Co.*, 93 I. C. C. 129, the Commission said, at page 133:

It is true that no producers of the inbound commodities, retailers of complainant's products, or ultimate consumers appeared at the hearing to testify that they would be benefited by the joint rates asked. It may also be true that retailers and consumers encounter no great difficulty in securing an adequate supply of grain products and mixed feeds from mills located on established routes over which joint rates with transit apply. But an individual shipper is entitled to the reasonable use of existing transportation facilities at reasonable rates on his traffic. Further, an individual miller is a shipper and entitled to reasonable rates, rules, and regulations measured in the light of the business and transportation practices in the industry in which he is engaged.

In *D. A. Stickell & Sons, Inc., v. Western Maryland Ry. Co.*, 146 I. C. C. 609, in which contentions similar to those advanced here were made, division 4, referring to *Flory* [fol. 51] *Milling Co. v. Central N. E. Ry Co.*, *supra*, said at page 613:

Upon the complaint of a single milling firm at Bangor, Pa., we found in that proceeding that additional through routes and joint rates via that point were necessary and desirable

in the public interest, although no evidence was offered on behalf of producers of the inbound commodities, retailers of complainant's products, or ultimate consumers. We there said:

The public interest is not conserved by shutting out, by denial of joint rates, a miller from markets which he can reach by routes not necessitating the performance of a greater total service for him than the service over present routes over which joint rates apply unless some substantial right of the carriers is thereby invaded. On the other hand, we would clearly not be justified in attempting to neutralize the disadvantage of geographical location by requiring wasteful service or additional service without adequate compensation, although the shipper may be in dire need.

That decision<sup>7</sup> was reversed by the Commission in 153 I. C. C. 759, because of the Supreme Court's decision in *United States v. Missouri Pac. R. Co.*, 278 U. S. 269. The principle announced in the quotation was not questioned by the Commission or the Court and was not reversed. It is sound, and applicable here.

We conclude that the routes sought are necessary and desirable in the public interest, but the Pennsylvania contends that even if that be true the Commission is without authority to require the establishment of the routes sought as they would short-haul the Pennsylvania without its consent.

Both parties use Chicago as a representative origin and Salisbury, Md., as a representative destination, and the places will be so used here. The distance over the short tariff route of the Pennsylvania between those points is 902 miles. Its haul from Fulton Junction is 155 miles and from York 174 miles. The distance over route 1 via Ful-[fol. 52] ton Junction is 946 miles and via York 958 miles, and over route 2 via Fulton Junction 938 miles and via York 950 miles. It is evident that the Pennsylvania's direct route is not unreasonably long and that the prescription of either route 1 or 2 would require the Pennsylvania to embrace in such route substantially less than the entire length of its railroad which lies between the termini of such route. In *D. A. Stickell & Sons, Inc., v. Western Maryland Ry. Co.*, *supra*, decided May 7, 1929, the Commission following *United States v. Missouri Pac. R. Co.*, *supra*,

found that it did not have power to require the establishment among other routes of route 1.

Section 15 (4) of the Interstate Commerce Act was amended, however, September 18, 1940. Among other changes not here material there was added thereto The exception and proviso which are italicized in the following quotation therefrom:

In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) *unless the Commission finds that through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic.* No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.

The carriers that would participate west of Hagerstown over routes 1 and 2 would receive the same hauls they now [fol. 53] receive on traffic via Hagerstown to destinations in trunk-line territory. The Pennsylvania is the only carrier that would participate in those routes which invokes the short-hauling restriction in section 15 (4), but as no additional routes are sought on traffic originated by it the underlined proviso does not affect the issues here considered. The question of whether the Commission is precluded from prescribing the routes sought depends on whether those routes are needed in order to provide adequate and more efficient or adequate and more economic transportation.



The Pennsylvania contends that its present routes are adequate, efficient, and economical. It maintains scheduled fast trains that operate frequently over direct routes, that do not go through Hagerstown, from the rate-break points and origins on its line and from its junctions with other carriers in central territory to the destinations here considered. Its main routes from the west are via Pittsburgh and its Enola yard, which is across the Susquehanna River from Harrisburg. Traffic moving north, south, and east from Harrisburg is classified at that yard. An average of 65 scheduled trains and in addition thereto extra sections of those trains, extra trains, and local trains move into and out of that yard each day. Grain handled by the Pennsylvania moving to and from Hagerstown moves through that yard. Three scheduled trains operate each way daily between Enola yard and Hagerstown, and additional sections and extra trains are used when needed. There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be [fol. 54] given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations.

Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers' standpoint. Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, on the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning, and on information received from the Western Maryland, complainant estimates that it would save 2 days in reaching destinations in the Del-Mar-Va peninsula if the routes sought were established. Its experience shows that it takes 1 day each way between Harrisburg and Hagerstown and 1 day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of 4 days required for the out-of-line service, and that it takes an average of 3 to 4 days for the movement of a car from its plant to destinations on the Del-Mar-Va peninsula.

The Pennsylvania does not categorically deny the latter statement but says "ordinarily speaking" it holds itself out to "make" established schedules from Hagerstown of 24.75 and 31.5 hours to Salisbury and 29 hours 55 minutes and 39.25 hours to Cape Charles, Va. It does not allege or show that it maintains through train service from Hagerstown to points on the Del-Mar-Va peninsula. In fact, the evidence indicates that it does not. The Pennsylvania says that there have been delays in classification and [fol. 55] at times excessive traffic and emergency conditions which have prevented it from maintaining those schedules. A witness for the Pennsylvania expressed the opinion that physical operations, presumably after the interchange at Hagerstown, are better via Enola yard than via York or Fulton Junction and estimates that a movement from Hagerstown via York would require 36.5 hours to Salisbury and 49.25 hours to Cape Charles and via Fulton Junction, 33 hours to Salisbury, and 45.75 hours to Cape Charles. No explanation is given why a longer time is estimated for the haul from Salisbury to Cape Charles for traffic moving over the sought routes than is allowed in the present schedules for traffic moving via Enola yard.

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction only once every 24 hours. Consequently, the interchange tracks at those junctions are now used to near, and sometimes to full, capacity. The limited facilities and operating difficulties encountered at or near those plants are described in considerable detail. The evidence does not show, however, that those conditions are any more difficult than operating difficulties encountered at Hagerstown.

It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of section 3 (3) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating [fol. 56] standpoint for it to haul traffic 149 miles out of



line. As far back as 1926, in *Manufacturers Assn. of York, Pa., v. Pennsylvania R. Co.*, 107 I. C. C. 219, the Pennsylvania advanced inadequacy of interchange facilities at York as a reason why it should not be required to establish reciprocal switching at that point. In that proceeding the Commission said, at page 239:

The record warrants the statement that existing facilities may, with comparatively slight trouble and reasonable expense, be made adequate to effect interchange at York without undue interference with other traffic. But even inadequacy of facilities is no defense. In our former report we said:

The fact that the interchange facilities are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest. Facilities for interchange exist; if inadequate, they may be made adequate to perform the service which the law requires. *St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co.*, 26 I. C. C. 226, 231.

The Pennsylvania also contends that it is more economical to transport traffic over its direct route and its routes via Hagerstown than it would be to transport it over routes 1 and 2. As evidence thereof, it introduced a cost study based on annual reports filed with the Commission in which the formula used by the Commission's Bureau of Statistics in its Statement No. 3812 of March 1938 was followed generally with some variations. That study purports to show the cost of transporting a car of grain weighing 33 tons over the direct routes of the Pennsylvania, its routes via Hagerstown, routes 1 and 2, and other routes between selected points. Among other things, it purports to show that, based on the Pennsylvania's average system costs and the average system costs of the other carriers which would participate in routes 1 and 2, it costs less to transport a car of grain over the Pennsylvania's routes via [fol. 57] Hagerstown than it would be to transport it over routes 1 or 2. The Pennsylvania does not contend that the study shows the cost of handling grain to the destinations under consideration but states that it furnishes a "reasonably reliable basis for determining the relative costs of transportation." Even as to relative costs, its value, if any, is limited to average system costs on all less-than-car-

load and carload freight, while here we are dealing with a heavy loading commodity moving comparatively long distances in well-defined channels.

The through rates on grain were established for application not only for direct single-line hauls but also for joint-line hauls over all reasonable routes. As has already been shown, well established freight routes, including those here sought up to Hagerstown, are maintained at the joint through rates via Hagerstown to destinations on the Western Maryland and many of its connections east of Hagerstown. There is nothing to indicate and it is not even specifically contended that the established joint through rates would not be reasonable over the sought routes to destinations on the Pennsylvania to the same extent that they are over the routes over which they apply to other destinations in eastern territory.

Yet the Pennsylvania, while contending that from the standpoint of operating conditions and operating costs its routes via Enola yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are [fol. 58] not comparable with and are less economical than routes that do not.

Prior to the amendment of section 15 (4), the Commission's power to prescribe through, all-rail, routes which would short haul any carrier participating therein without its consent was limited to instances where the inclusion of the entire length of its railroad between the termini of such route would make the through route unreasonably long as compared with another practicable route which could otherwise be established. While that section limited the powers of the Commission, it left it entirely within the discretion of the carrier as to whether it would insist upon its long haul. It was at liberty to voluntarily join in any route which it believed to be more adequate, efficient, and economical than a route embracing its entire line, although the latter route might not be unreasonably long. Therefore, no exception to the restriction on the Commission's power was necessary to protect carriers' interests.

As to the shippers, however, a different situation existed. It rests within the power of carriers by insistence on their long hauls to place localities and shippers on the lines of other carriers or not on their direct lines at severe rate and competitive disadvantages and, as in the instant case, to deprive shippers of relatively equal opportunities to compete in markets served only by them. Carriers in many instances availed themselves of the right to their long haul, and the disadvantaged localities and shippers had no redress. It was to remedy that situation, apparently, that the second exception was added. The Commission was thereby given authority, when it finds that through routes are "needed in order to provide adequate and more efficient or adequate and more economic transportation," [fol. 59] to require the establishment of such routes although they may short haul one or more of the participating carriers. We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint. That such was the intent of the Congress is evident from the conditions the amendment was apparently designed to correct, from the fact that in the added proviso even the preference to be accorded the originating carrier is made subservient to the public interest, from both limitations on the right of a carrier to retain its long haul, and from the fact that the Congress specifically provided that, as between carriers, "No through route or joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs."

That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va. peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described.

We find that the two routes sought are necessary and desirable in the public interest and that they are needed to [fol. 60] provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg. An appropriate order will be entered.

[fol. 61]

## EXHIBIT "C" TO PETITION

## CORRECTED ORDER

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 18th day of March, A. D. 1943.

No. 28647

D. A. STICKELL &amp; SONS, INC.

v.

THE ALTON RAILROAD COMPANY; ALTON AND SOUTHERN RAILROAD; The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Belt Railway Company of Chicago; The Chesapeake and Ohio Railway Company; Chicago and Eastern Illinois Railroad Company; Chicago & Illinois Midland Railway Company; Chicago and North Western Railway Company (Charles M. Thomson, Trustee); Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company (Holman D. Pettibone, Trustee); Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees); The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees); Chicago South Shore and South Bend Railroad; The Detroit and Toledo Shore Line Railroad Company; Detroit, Toledo and Ironton Railroad Company; Elgin, Joliet and Eastern Railway

Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; Louisville and Nash-  
[fol. 62] ville Railroad Company; The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver); Minneapolis, St. Paul & Sault Ste. Marie Railway Company (G. W. Webster and Joseph Chapman, Trustees); Missouri Pacific Railroad Company (Guy A. Thompson, Trustee); The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh and Lake Erie Railroad Company; The Pittsburgh & West Virginia Railway Company; Southern Railway Company; Toledo, Peoria & Western Railroad; Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers); Western Maryland Railway Company; The Wheeling and Lake Erie Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee); and The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee).

This proceeding being at issue upon complaint and answers on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

*It is ordered*, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before [fol. 63] June 28, 1943, by notice to this Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act and thereafter to maintain and apply to the interstate transportation of grain, grain products and by-products taking the same rates as grain, in carloads, from (a) points on the lines of the New York Central Railroad Company and the Wabash Railway Company and their connections other than the Pennsylvania Railroad Company in Ohio, Indiana, and Illinois, and (b) the market points of St. Louis, Mo., and Chicago, East St. Louis and Cairo, Ill., when originating beyond those market points,



over routes embracing (1) the lines of the New York Central Railroad Company to Youngstown, Ohio, Pittsburgh and Lake Erie Railroad Company to Connellsville, Pa., Western Maryland Railway Company to Hagerstown, Md., thence Western Maryland Railway Company to York, Pa., or Fulton Junction, Md., and the Pennsylvania Railroad Company to destinations on its lines east of York and Fulton Junction and between New York, N. Y., and Cape Charles, Va., and (2) the lines of the Wabash Railway Company to Toledo, Ohio, the Wheeling and Lake Erie Railway Company to Pittsburgh Junction, Ohio, the Pittsburgh & West Virginia Railway Company to Connellsville, thence over the routes through Hagerstown, as hereinbefore described to the same destinations, joint rates which shall not exceed the lowest through rates contemporaneously maintained on like traffic from the same origins to those destinations over the direct routes of the Pennsylvania Railroad Company or over routes in which it is a participating carrier via its Enola Yard near Harrisburg, Pa.

[fol. 64] *And it is further ordered*, That this order shall continue in force until the further order of the Commission.

By the Commission, division 2.

W. P. Bartel, Secretary. (Seal.)

[fol. 65] EXHIBIT "D" TO PETITION

CORRECTED ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of October, A. D. 1943.

No. 28647

D. A. STICKELL & SONS, INC.,

v.

THE ALTON RAILROAD COMPANY, ET AL.

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of defendants for reargument and reconsideration:

*It is ordered*, That said petition be, and it is hereby, denied.

By the commission.

W. P. Bartel, Secretary. (Seal.)



[fol. 66] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed  
Dec. 17, 1943

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Tit. 28, Sec. 45a), providing, in part, "that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement," we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Interstate Commerce Commission. By Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel.

December 15, 1943.

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed  
December 17, 1943

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, for answer to the petition in this case, answers and says:

## I

Answering paragraphs I to V, inclusive, of the petition, the Commission admits the allegations thereof, except the Commission denies that this suit is brought under the general equity jurisdiction of this Court, as alleged in paragraph III.

## II

Answering paragraph VI of the petition, the Commission admits the allegations thereof, except that the Commission

alleges that the effective date of its order is presently March 17, 1944, and not December 17, 1943.

[fol. 68]

### III

Answering paragraphs VII and VIII of the petition, the Commission admits the allegations thereof, but respectfully refers the Court to the complaint itself, Exhibit A to the petition, for more full and complete information as to its contents.

### IV

Answering paragraph IX of the petition, the Commission admits the allegations thereof.

### V

Answering paragraph X of the petition, the Commission admits that the transit arrangements are maintained in the tariffs of petitioners; that out-of-line hauls of 149 and 48 miles exist on the routes of the Pennsylvania and Baltimore & Ohio Railroads, respectively, for which back-haul charges are assessed under the tariffs, in addition to the joint through rates. The Commission alleges that out-of-line hauls and back-haul charges do not exist on the direct and more economical routes prescribed by the Commission in its report and order herein. The Commission admits that the Pennsylvania also assesses an additional transit charge; that the plant of complainant is on the tracks of the Western Maryland Railroad and that the Pennsylvania absorbs switching charges as is the usual custom.

### VI

Answering paragraph XI of the petition, the Commission admits that the complainant did not question the reasonableness of the charge of the Pennsylvania Railroad for out-of-line service on its round-about route. The Commission alleges that there is no out-of-line service or back-haul [fol. 69] charge therefor upon the direct and economical routes prescribed by the Commission.

### VII

Answering paragraphs XII, XIV and XV of the petition, the Commission admits the quotations from its report

therein contained, but refers the Court to Exhibit B of the petition for a more full and complete statement of the contents of said report than is contained in said paragraphs.

### VIII

Answering paragraph XIII of the petition, the Commission respectfully refers the Court to its report and order dated March 18, 1943, referred to in the petition and made a part thereof, as Exhibit B, for a more full and complete statement as to the contents of said report and order than is contained in said paragraph.

### IX

Answering paragraph XVI of the petition, the Commission denies that there was "testimony" that the direct routes requires a longer time to operate than the back-haul routes of the Pennsylvania. The report, Exhibit B, recites testimony to the effect that the direct routes prescribed by the Commission require from 2 to 4 days less time than the back-haul route of the Pennsylvania.

### X

Answering paragraph XVII of the petition, the Commission denies the allegations thereof.

### XI

Answering paragraph XVIII of the petition, the Commission denies that it failed to find in accordance with the [fol. 70] facts that neither York nor Fulton Junction would be as satisfactory as interchange points between the Western Maryland and the Pennsylvania as Hagerstown, and alleges that no such routing was at issue before the Commission. The plant of complainant before the Commission is located upon the tracks of the Western Maryland at Hagerstown. The routes requested, and the routes ordered by the Commission permit the Western Maryland to retain the traffic on its rails to the junctions with the Pennsylvania at York and at Fulton Junction, which are the natural routes now observed on traffic to points on other railroads than the Pennsylvania, and are the routes desired by the Western Maryland, which railroad is not opposing the Commission's order.

## XII

Answering paragraph XIX of the petition, the Commission denies that no issue was presented in the complaint before it as to the refusal of the Pennsylvania to interchange traffic with the Western Maryland at York and Fulton Junction. In describing the routes desired, the complaint specified that said routes east of Hagerstown shall be as follows: "thence Western Maryland Railway Company to York, Pa., or Fulton Junction, Md., and the Pennsylvania Railroad Company to destinations on its lines east of York and Fulton Junction." Moreover, the above request in the complaint was supported by the testimony before the Commission showing that the only route via the Pennsylvania open to complainant under the published tariffs was the back-haul route via Harrisburg.

## XIII

Answering paragraph XX of the petition, the Commission denies that the railroads petitioners gave evidence of comparative costs over the proposed routes and over existing routes for the transportation of the commodities shipped by complainant before the Commission, or that any formula was ever prepared by the Commission for determining the cost of transporting the shipments of said complainant, or any other commodity or commodities. Said alleged cost evidence only purports to be a comparison of the average system costs of each railroad for handling all traffic, including very low grade traffic and very high grade traffic. The purported average costs shown bear no relation whatever to the traffic here involved and the Commission so found from all the facts of record.

## XIV

Answering paragraph XXI of the petition, the Commission denies that it made no finding that the existing Pennsylvania round-about route was not adequate, or that the prescribed routes are needed to provide adequate transportation. The finding of the Commission is:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery,

complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va. peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described."

Based upon the facts of record, the finding of the Commission was "we conclude that the routes sought are necessary and desirable in the public-interest."

[fol. 72]

#### XV

Answering paragraph XXII of the petition, the Commission denies that it made no finding that the routes which it has prescribed are more efficient or more economic from the standpoint of railroad transportation. The Commission found that the routes it prescribes "would not result in any cross-hauling or wasteful transportation but they would eliminate a 149-mile out of line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing switching charges at Hagerstown."

The Commission further denies that the finding that the routes prescribed are needed to provide more efficient and more economical transportation is not supported by substantial evidence.

#### XVI

Answering paragraph XXIII of the petition, the Commission admits that the quotations contained in said paragraph are correct excerpts from its report of March 18, 1943, attached to and made a part of the petition as Exhibit B, but for more full and complete information concerning its findings as contained in said report, the Commission respectfully refers the court to said Exhibit B.

#### XVII

Answering paragraph XXIV of the petition, the Commission admits that the petitioners herein did not consent to the order of March 18, 1943, entered by the Commission.

In this connection the Commission alleges that the administration of Section 15(4) of the Act empowers it to enter orders under that section, irrespective of whether the petitioners consent, upon a finding by the Commission that the routes ordered are "needed in order to provide adequate and more efficient or more economic transportation." The [fol. 73] Commission further alleges that in this case it made such finding. The Commission denies that the effect of its order is to require an originating railroad to "short-haul" itself in violation of the provisions of Section 15(4), but on the contrary the Commission alleges that its order and report in this case is a correct construction of the provisions of the Act.

### XVIII

Answering the allegations of paragraphs XXV to XLI, inclusive, of the petition, the Commission denies that its order of March 18, 1943, is void or beyond its authority for the reasons set forth in said paragraphs, or for any other reason or reasons.

### XIX

Answering the allegations of paragraph XLII of the petition, the Commission admits that said petitioners will incur penalties if they refuse to obey the order of the Commission.

### XX

Further answering the allegations of the petition, the Commission admits and alleges that it made and entered the report and order dated March 18, 1943 (255 I. C. C. 333), referred to in paragraph V of the petition and made a part thereof as Exhibit B, in proceedings then pending before it entitled Docket No. 28647, following complaint filed with it on April 9, 1941, by D. A. Stickell and Sons, Inc., as alleged in paragraph IV of the petition; that full hearings were had and thereafter the Commission made and entered and served upon all parties to said proceeding its said report of March 18, 1943. The Commission further alleges that in said Docket No. 28647, the rail defendants petitioned [fol. 74] for reconsideration and reargument of said report and order of March 18, 1943, which petition was denied by the Commission on October 4, 1943. The Commission admits and alleges that in said proceedings the parties thereto, including the petitioners herein, were, and that each of them



was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said report and order were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by petitioners in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceedings, including the petitioners herein, its said report and order of March 18, 1943, 255 I. C. C. 333, annexed to and made part of the petition as Exhibit B; that said report and order included the Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its order of March 18, 1943, was based.

The Commission further alleges that the findings and conclusions of said report were and are, and that each of them was and is fully supported and justified by the evidence submitted in said proceedings as aforesaid.

[fol. 75] The Commission further alleges that in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the petition herein.

The Commission further alleges that said report and order of March 18, 1943, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the petition. The Commission denies that its said orders are unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said petition, or for any other reason or reasons. The Commission denies that its said

order causes, or will cause, petitioners either irreparable damage or any damage if said orders are not enjoined.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order referred to and made a part of the petition as Exhibit B, which report and order is hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by E. M. Reidy,  
Assistant Chief Counsel. Daniel W. Knowlton,  
Chief Counsel, of Counsel.

[fol. 76] *Duly sworn to by J. Haden Alldredge. Jurat omitted in printing.*

Service of a copy of this Answer of the Interstate Commerce Commission acknowledged this 17th day of December, 1943.

Joseph F. Eshelman, Francis R. Cross, Wm. Pepper  
Constable, Attorneys for Petitioners.

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER REQUIRING RESPONDENT TO SHOW CAUSE WHY APPLICATION FOR INTERLOCUTORY INJUNCTION SHOULD NOT ISSUE—Filed 27th December 1943

Whereas, the above entitled action is pending for an interlocutory injunction and for a final decree to enjoin, set aside, annul, and suspend the order of the Interstate Commerce Commission of March 18, 1943, entered in its Docket No. 28647, D. A. Stickell & Sons, Inc. v. The Alton Railroad Company et al., and made to become effective on June 28, 1943, on 30 days' notice, thereby requiring the filing and posting of tariffs in compliance therewith not later than 30 days prior to said effective date, which effective date by subsequent orders of the said Commission was postponed until March 17, 1944, upon like notice; and

Whereas, a verified petition praying for an interlocutory injunction and for a final decree enjoining, setting aside, annulling, and suspending the aforesaid order of the Interstate Commerce Commission and permanently enjoining the enforcement of said order has been duly filed with the Clerk of this Court; and

Whereas, it is made to appear from said verified petition that the petitioners may be entitled to the interlocutory injunction and final decree therein prayed for, it is

Ordered that the respondent herein, the United States of America, appear before the undersigned and two other Judges at least one of whom being a United States Circuit Judge, said judges having been called by the undersigned [fol. 78] to his assistance to hear and determine said petition in accordance with the provisions of an Act of Congress of October 22, 1913 (38 Stat. 220; Title 28 U. S. Code, Sec. 47) at the United States Court House in Baltimore, Maryland, on January 26th, 1944, at 10 o'clock, a. m., of that day or as soon thereafter as counsel can be heard, and then and there show cause before said Court and Judges so convoked or so called together why the aforesaid application for an interlocutory injunction should not issue; and it is further

Ordered that a copy of this order and the verified petition be served forthwith upon the Attorney General of the United States and on the Interstate Commerce Commission by registered mail or by personal delivery and upon the United States Attorney or Assistant United States Attorney at Baltimore, Md., not later than five days before the day herein set for said hearing.

Dated: December 27th, 1943.

William C. Coleman, United States District Judge.

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[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING THREE JUDGE STATUTORY COURT—Filed  
December 27, 1943

This cause coming on for hearing on application for an interlocutory injunction and a permanent injunction and in accordance with the provisions of the Act of Congress of

October 22, 1913 (38 Stat. 220; Title 28 U. S. Code, Sec. 47), it is

Ordered, that the following judges be called to my assistance to hear and determine said application for an interlocutory injunction and for permanent injunction: United States Circuit Judge Morris A. Soper, and United States District Judge W. Calvin Chesnut, and that the time and place shall be the District Court of the United States for the District of Maryland, at Baltimore, Md., at 10 A. M. Eastern War Time, on the 26th day of January, 1944.

Dated: December 27th, 1943.

William C. Coleman, United States District Judge.

[fols. 80-82] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF D. A. STICKELL & SONS, INC., FOR LEAVE TO INTERVENE—Filed December 31, 1943

D. A. Stickell & Sons, Inc., a Maryland corporation, moves the Court for leave to intervene in the above entitled cause and to become an intervener therein, in order to protect rights involved in said proceeding, file answer to the petition of the petitioners therein, produce and cross-examine witnesses, file brief, and be heard at the argument by counsel; and for reasons why applicants are entitled to intervene, applicant states that it was a party to the proceeding before the Interstate Commerce Commission, *D. A. Stickell & Sons, Inc., complainant vs. The Alton Railroad Company, et al., defendants*, I. C. C. Docket No. 28647, in which proceeding said Commission entered the order here at issue.

It is provided in Sections 212 and 213 of the Judicial Code approved March 3, 1911, that any party in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any suit wherein is involved the validity of such order.

C. R. Hillyer, Attorney for Applicant for Intervention Named Herein, Field Building, Chicago, Illinois, November 16, 1943. Charles F. Wagaman, Attorney for Applicant for Intervention Named Herein, Hagerstown Trust Bldg., Hagerstown, Md.

[fol. 82] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO D. A. STICKELL & SONS INC. TO  
INTERVENE—December 31, 1943

This cause coming on to be heard upon motion of D. A. Stickell & Sons, Inc., a Maryland corporation,

It is hereby ordered, adjudged and decreed that the Motion to Intervene be granted, and that D. A. Stickell & Sons, Inc., a Maryland corporation, be permitted to intervene in this cause and file its Answer herein;

It is further ordered, adjudged and decreed that the Intervenor, D. A. Stickell & Sons, Inc., a Maryland corporation, plead or answer in this cause on or before January 15, 1944.

Enter: William C. Coleman, Judge.

Dated: December 31st, 1943.

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[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed December 31, 1943

Now comes the United States of America, defendant herein, and in answer to the petition says:

1. Admits the allegations of paragraphs I through V of the petition except that it denies that this suit is brought under the general equity jurisdiction of this Court as alleged in paragraph III.

2. Admits the allegations of paragraph VI except that it alleges that the effective date of the Commission's order has now been extended to March 17, 1944.

3. Admits the allegations of paragraphs VII through XV but refers the Court to the report of the Commission attached to the petition as Exhibit B for a more complete statement concerning the matters referred to in these paragraphs.

4. Admits that the evidence described in paragraph XVI was offered by a railroad witness but denies that this evidence was "uncontrolled" or uncontroverted. For further answer alleges that the Commission's report recites that complainant offered testimony that the direct routes prescribed by the Commission required from two to four days [fol. 84] less time than the back-haul route of the Pennsylvania. Admits that the Commission did not find in accordance with the railroad evidence but alleges that the Commission found the railroad evidence not controlling after weighing all the evidence in the record, and not merely for the reason stated in paragraph XVI. For further answer alleges that it is the province of the Commission and not of the courts to weigh the evidence.

5. Denies the allegations of paragraph XVII of the petition.

6. In answer to paragraphs XVIII and XIX of the petition this defendant refers the Court to the following statement made by the Commission in its report, which statement refers to the matters described in these paragraphs of the petition:

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction only once every 24 hours. Consequently, the interchange tracks at those junctions are now used to near, and sometimes to full, capacity. The limited facilities and operating difficulties encountered at or near those plants are described in considerable detail. The evidence does not show, however, that those conditions are any more difficult than operating difficulties encountered at Hagerstown.

It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of section 3 (3) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such point. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of



duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line.

For further answer alleges that it is apparent from this statement that the Commission referred to section 3(3) [renumbered section 3(4) by the Transportation Act of 1940] merely in disposing of the defense interjected by the Pennsylvania Railroad that its interchanged facilities at York and Fulton Junction were inadequate. For further answer admits that while the complaint does not specifically [fol. 85] refer to section 3(4) of the Interstate Commerce Act, alleges that the Commission is nevertheless under an obligation to enforce of its own motion all applicable provisions of the Act in any particular situation. For further answer alleges that the Commission properly construed section 15(4) of the Interstate Commerce Act as allowing the establishment of a through route which would short-haul a carrier where it would result in the provision of adequate and more efficient or more economic transportation from the shipper's standpoint, irrespective of whether it would result in more efficient or more economical transportation from the standpoint of railroad transportation or operation. Consequently the evidence referred to in these paragraphs, which relates only to the efficiency of railroad operation, was completely immaterial so far as the issues in the present case were concerned.

7. In answer to paragraph XX of the petition, denies that the railroads gave evidence of comparative costs over the proposed routes and over existing routes for the transportation of the commodities shipped by complainant before the Commission or that any formula was ever prepared by the Commission for determining the cost of transporting shipments of said complainant or any other commodity or commodities. Said alleged cost evidence only purports to be a comparison of the average system costs of each railroad for handling all traffic, including very low grade traffic and very high grade traffic. The purported average costs shown bear no relation whatever to the traffic here involved and the Commission so found from all the facts of record. For further answer alleges that in view of the Commission's construction of section 15 (4) of the Act, referred to in the preceding paragraph of this answer, this evidence, which at most relates only to the efficiency and

economy of railroad operation, was completely immaterial [fol. 86] so far as the issues in the present case were concerned.

8. Answering paragraph XXI of the petition, denies that the Commission made no finding that the existing Pennsylvania back-haul route was not adequate, or that the prescribed routes are needed to provide adequate transportation. The pertinent finding of the Commission is as follows:

That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described.

9. In answer to paragraph XXII of the petition, alleges that under section 15(4), as the Commission properly construed it, no finding was necessary that the routes which the Commission prescribed would be more efficient or more economic from the standpoint of railroad transportation or operation in view of the finding that the prescribed routes were necessary to provide adequate and more efficient and more economical transportation from the shipper's standpoint. Denies that the latter finding is not supported by substantial evidence. For further answer alleges that even with respect to the efficiency and economy of railroad operation, the Commission found that the prescribed routes "would not result in any cross-hauling or wasteful transportation but \* \* \* would eliminate a 149-mile out-of-line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing switching charges at Hagerstown."

[fol. 87] 10. Admits the allegations of paragraph XXIII of the petition but refers the Court to the report of the Commission for a more complete statement concerning its findings.

11. Answering paragraphs XXIV of the petition defendant admits that the petitioners herein did not consent to the order of March 18, 1943 entered by the Commission. In this connection alleges that section 15(4) of the Act empowers the Commission to enter orders under that section irrespective of whether the railroads consent, upon a finding by the Commission that the routes ordered are "needed in order to provide adequate and more efficient or more economic transportation." For further answer alleges that the Commission has herein properly construed the quoted language as referring to adequate, more efficient and more economic transportation from the shipper's standpoint. The Commission's report contains adequate findings to bring the present case within this exception of the statute as so construed. For further answer denies that the effect of the Commission's order is to require any railroad to "short-haul" itself in violation of the provisions of section 15(4), as alleged in these paragraphs, but, on the contrary, alleges that this order and report represent a correct construction of the provisions of the Act.

12. Answering the allegations of paragraphs XXXIV through XLI of the petition, denies that the Commission's order is void or beyond its authority for the reasons set forth in said paragraphs or for any other reasons.

13. In answer to paragraph XLII of the petition, admits that the carriers will suffer penalties if they do not abide by the Commission's order. Denies that any of the plaintiff railroads except the Pennsylvania Railroad will suffer any injury or damage from this order. Denies that the [fol. 88] injury to the Pennsylvania Railroad which may result from this order is in any respect unlawful.

Wherefore, it is respectfully prayed that the petition be dismissed.

Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Counsel for the United States of America; Wendell Berge, Assistant Attorney General; Bernard J. Flynn, United States Attorney.

### CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above answer upon each of the following counsel this 30th day of December, 1943 by mailing them a copy thereof:

Edward M. Reidy, Esquire, Assistant Chief Counsel,  
Interstate Commerce Commission, Washington 25,  
D. C.;

C. R. Hillyer, Esquire, 1960 Field Building, 135 South  
LaSalle Street, Chicago 3, Illinois;

William Pepper Constable, Esquire, 1000 Maryland  
Trust Building, Baltimore 2, Maryland;

Francis R. Cross, Esquire, Baltimore and Ohio Build-  
ing Baltimore, Maryland;

Joseph F. Eshelman, Esquire, Broad Street Station  
Building, Philadelphia 4, Pennsylvania.

Robert L. Pierce, Special Assistant to the Attorney  
General.

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[fol. 89]      IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERVENOR, D. A. STICKELL & SON, INC.—Filed  
January 7, 1944

The Intervener, D. A. Stickell & Sons, Inc., in the above  
entitled suit, hereinafter called the "Intervener," saving  
and reserving to itself all benefit and advantage of excep-  
tion to the many errors and insufficiencies in the plaintiffs'  
petition, for answer thereunto, answers and says:

#### I

Answering Paragraph 1 of this petition. This Inter-  
vener admits the allegations therein contained as to the  
status of petitioners.

#### II

Answering paragraph 2 of this petition, this Intervener  
admits that the petitioners are common carriers of prop-  
erty by railroad, subject to the Interstate Commerce Act.

#### III

Answering paragraph 3 of this petition, this Intervener  
admits that this suit is brought under the provisions of Acts

of Congress there enumerated; but Intervener is not advised of the amount in controversy as to each petitioner. Intervener denies that this suit is brought under the general equity jurisdiction of this Court.

[fol. 90]

#### IV

Answering paragraph 4 of this petition, Intervener admits that the venue of this suit is laid in the District of Maryland under Title 28, U. S. Code, Section 43.

#### V

Answering paragraph 5 of said petition, Intervener admits that it sets forth the history of the proceedings in said cause before the Commission and also admits the entry of the report and orders by the Commission therein enumerated.

#### VI

Answering paragraph 6 of said petition, Intervener admits the further statement of proceedings before the Commission, including the petition for re-argument and reconsideration the further orders of the Commission culminating in the final effective date March 17, 1943.

#### VII

Answering paragraph 7 of said petition, Intervener admits that the complaint before the Commission invoked the Commission's power under Section 15 of the Act, Title 49 U. S. Code, Sec. 15, to require the establishment of through routes and joint rates on grain, grain products, and grain by-products from points of origin in the States of Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, and Missouri, and from Omaha, Nebraska, to Hagerstown, Md., for mixture at that point into livestock and poultry food, and for reshipment thence to destinations on the lines of The Pennsylvania Railroad Company, east of York, Pa., and Fulton Junction (Baltimore) Md., and between New York, N. Y., and Cape Charles, Va., inclusive, and particularly to destinations in the so-called Del-Mar-Va peninsula, herein termed the Peninsula, the latter being that part of Delaware, Maryland, and Virginia south of Wilmington, Del., and between the Chesapeake and Delaware Bays.

[fol. 91]

## VIII

Answering paragraph 8 of said petition, Intervener admits that it manufactures livestock and poultry feed at Hagerstown; that its raw materials consisting largely of grain and grain products originate west of Hagerstown, and that the consumers of its products are located east of Hagerstown, a considerable portion of them being located upon the Del-Mar-Va Peninsula described in the petition. Intervener alleges that the shortest and most direct and economical routes from the origins of the raw materials to the points of consumption via Hagerstown are the two routes ordered by the Commission herein.

## IX

Answering paragraph 9 of said petition, Intervener admits that the rates of transportation apply as stated in said paragraph.

## X

Answering paragraph 10 of said petition, Intervener admits that the transit arrangements are maintained in the tariffs of petitioners; that out-of-line hauls of 149 and 48 miles exist on the routes of the Pennsylvania and Baltimore & Ohio Railroads, respectively, for which back-haul charges are assessed under the tariffs, in addition to the joint through rates. Intervener alleges that out-of-line hauls and back-haul charges do not exist on the direct and more economical routes prescribed by the Commission in its report and orders herein. Intervener admits that the Pennsylvania also assesses an additional transit charge; that the plant of Intervener is on the tracks of the Western Maryland Railroad and the Pennsylvania absorbs switching charges as is the usual custom.

## XI

Answering paragraph 11 of said petition, Intervener admits that it does not question the reasonableness of the [fol. 92] Pennsylvania's charge for out-of-line service on its round-about route. Intervener alleges that there is no out-of-line service or back-haul charge therefor upon the direct and economical routes prescribed by the Commission.



## XII

Answering paragraph 12 of said petition, Intervener admits that the decision of the Commission named the distances over the present and proposed routes as there stated. It is alleged that the distance via the present Pennsylvania back-haul route via Hagerstown is 1,051 miles, and the distances over the direct and economical routes prescribed by the Commission herein are 938 miles via one Commission route and 958 miles by the other Commission route. In addition to the quotation from the report of the Commission contained in paragraph 12 of said petition, the Commission further compares the efficiency of the routes prescribed with the inefficiency of the present route, as follows:

“Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers’ standpoint. Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, on the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning, and on information received from the Western Maryland, complainant estimates that it would save 2 days in reaching destinations in the Del-Mar-Va Peninsula if the routes sought were established. Its experience shows that it takes 1 day each way between Harrisburg and Hagerstown and 1 day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of 4 days required for the out-of-[fol. 93] line service, and that it takes an average of 3 to 4 days for the movement of a car from its plant to destinations on the Del-Mar-Va peninsula.”

## XIII

Answering paragraph 13 of said petition, Intervener admits that the Commission decided that the two routes sought by complainant were necessary and desirable in the public interest and are “needed in order to provide adequate and more efficient or adequate and more economic transportation.” (Section 15 (4) of the Act). Said para-

graph of the petition does not continue the quotation from the Act which states:

“Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic.”

In view of the above proviso to the Act, it is alleged that via the Commission-prescribed routes the railroads which originate the traffic are not the Pennsylvania, and that said railroads therefore under the statute are entitled to retain the traffic as the Commission finds.

#### XIV

Answering paragraph 14 of said petition, Intervener admits that the report of the Commission contains the description of the present back-haul route of the Pennsylvania there quoted. Said quotation, however, stops short and does not continue the quotation from the report immediately following where the Commission sets forth the inadequacy and inefficiency of the present back-haul route of the Pennsylvania when compared with the direct and efficient routes prescribed by the Commission. It will be unnecessary to quote the report here as it is already contained in the answer to paragraph 12 of the petition.

[fol. 94]

#### XV

Answering Paragraph 15 of said petition, Intervener alleges that the direct route of the Pennsylvania there referred to, passes 73 miles to the north of Hagerstown and, therefore, is of no use or concern to Intervener.

#### XVI

Answering paragraph 16 of said petition, Intervener denies that there was “uncontrolled testimony” that the direct routes require a longer time to operate than the back-haul routes of the Pennsylvania. The report, Exhibit B, recites the testimony to the effect that the direct routes prescribed by the Commission require from 2 to 4 days less time than the back-haul route of the Pennsylvania.

This part of the report is quoted hereinbefore in the answer to paragraph 12.

### XVII

Answering paragraph 17 of said petition, Intervener denies that the uncontroverted evidence showed that the routes from Hagerstown to Milford, N. J. and Chatham, Pa. would necessarily be via Fulton Junction and the junctions shown in the petition. Intervener alleges that the direct route shown of record from Hagerstown to Milford and Chatham is through York, Lancaster and Pomeroy which it is alleged is a reasonably straight route.

### XVIII

Answering paragraph 18 of said petition, Intervener denies that the Commission failed to find in accordance with the facts that neither York nor Fulton Junction would be as satisfactory as interchange points between the Western Maryland and the Pennsylvania as Hagerstown, and alleges that no such routing was at issue before the Commission. The plant of Intervener is located upon the tracks of the Western Maryland at Hagerstown. The routes requested, and the routes ordered by the Commission [fol. 95] permit the Western Maryland to retain the traffic on its rails to the junctions with the Pennsylvania at York and at Fulton Junction, which are the natural routes now observed on traffic to points on other railroads than the Pennsylvania, and are the routes desired by the Western Maryland which railroad is not opposing the Commission's order.

### XIX

Answering paragraph 19 of said petition, Intervener denies that no issue is presented in its complaint as to the refusal of the Pennsylvania to interchange traffic with the Western Maryland at York and Fulton Junction. In describing the routes desired, the complaint specifies that said routes east of Hagerstown shall be as follows: "thence Western Maryland Railway Company to York, Pa., or Fulton Junction, Md., and the Pennsylvania Railroad Company to destinations on its lines east of York and Fulton Junction." Moreover, the above request in the complaint was supported by the testimony of complainant before this Commission showing that the only route via the Pennsylv-

vania open to complainant under the published tariffs was the back-haul route via Harrisburg.

## XX

Answering paragraph 20 of said petition, Intervener denies that railroads petitioners gave evidence of comparative costs over the proposed routes and over existing routes for the transportation of the commodities shipped by Intervener, or that any formula was ever prepared by the Commission for determining the cost of transporting the shipments of Intervener, or any other commodity or commodities. Said alleged cost evidence only purports to be a comparison of the average system costs of each railroad for handling all traffic, including very low grade traffic [fol. 96] and very high grade traffic. The purported average costs shown bear no relation whatever to the traffic here involved and the Commission so found from all the facts of record.

## XXI

Answering paragraph 21 of said petition, Intervener denies that the Commission made no finding that the existing Pennsylvania round-about route was not adequate, or that the prescribed routes are needed to provide adequate transportation. The finding of the Commission is:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described."

Based in part upon the above facts of record, the finding of the Commission is "we conclude that the routes sought are necessary and desirable in the public interest."

## XXII

Answering paragraph 22 of said petition, Intervener denies that the Commission made no finding that the routes which it has prescribed are more efficient or more economic from the standpoint of railroad transportation. The Commission finds that the routes it prescribes "would not result in any cross-hauling or wasteful transportation but they would eliminate a 149-mile out of line haul and two switching interchanges at Hagerstown and would relieve the [fol. 97] Pennsylvania from the expense of maintaining transit and absorbing switching charges at Hagerstown."

Intervener further denies that the finding that the routes prescribed are needed to provide more efficient and more economical transportation is not supported by substantial evidence. The answer to paragraph 12 hereinbefore contains the Commission's summary of some of the evidence showing that the present route is so circuitous that the time of operation is from 2 to 4 days longer than the efficient routes prescribed by the Commission. The report of the Commission states:

"Yet the Pennsylvania, while contending that from the standpoint of operating conditions and operating costs its routes via Enola yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not." It is alleged, therefore, that the petition rests upon a misapprehension of the facts of record and the finding of the Commission based upon said facts.

## XXIII

Answering paragraph 23 of said petition, Intervener admits that the quotations given from the Commission's report recite certain facts showing that the two routes prescribed by the Commission are necessary and desirable in the public interest. Intervener denies that said finding is based along upon said facts. Intervener has pointed out

[fol. 98] hereinbefore many other facts of record recited in the report that also support said finding, which is based upon the entire record offered before the Commission by both the petitioners and the intervener.

#### XXIV

Answering paragraph 24 of said petition, Intervener admits that petitioners did not consent to the order entered by the Commission. The administration of Section 15(4) of the Act empowers the Commission to enter its orders, irrespective of whether the petitioners consent, upon a finding by the Commission that the routes ordered are "needed in order to provide adequate and more efficient or more economic transportation." The Intervener further alleges that in this case it made such finding. The Intervener denies that the effect of its order is to require an originating railroad to "short-haul" itself in violation of the provisions of Section 15(4), but on the contrary the Intervener alleges that its order and report in this case is a correct construction of the provisions of the Act.

#### XXV

Answering paragraph 25 of said petition, Intervener denies that the Commission did not make a finding that the prescribed routes are "needed in order to provide adequate and more efficient or more economic transportation. It is alleged that such finding was duly made by the Commission in the exercise of its statutory discretion upon the facts of record, as shown in the report of the Commission, Exhibit B to petition.

[fol. 99]

#### XXVI

Answering paragraph 26 of said petition, Intervener denies that the order of March 18, 1943 was beyond the statutory power of the Commission because it requires the petitioners, without their consent, to participate in the new through routes. Intervener refers to the Amended Section 15(4) of the Act which specifically empowers the Commission to enter said order in the exercise of its discretion. Intervener has hereinbefore shown that the Commission specifically found that the prescribed direct, shorter routes will be more efficient or more economic for both the peti-



tioners and the intervener than the existing round-about, back-haul route which requires an addition to the rate to compensate for the unneeded and unwanted service entailed upon the present route.

## XXVII

Answering paragraph 27 of said petition, Intervener denies that the Commission failed to consider whether the prescribed routes will be more efficient or economic of railroad operation. Its report showing that it gave consideration to this subject is set forth hereinbefore in the answer to paragraph 22.

## XXVIII

Answering paragraph 28 of said petition, Intervener denies that the Commission failed to find that the prescribed through routes are "needed in order to provide adequate and more efficient or more economic transportation." The Commission found as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

[fol. 100]

## XXIX

Answering paragraph 29 of said petition, Intervener denies that the Commission has no power under the statute to enter said order without the consent of petitioners.

## XXX

Answering paragraph 30 of said petition, Intervener denies that the Commission entered its order "without regard" to railroad operation. The answer to paragraph 22 shows that the Commission considered advantages to both the railroads and the Intervener in the prescribed routes.

### XXXI

Answering paragraph 31 of said petition, Intervener denies that the order of the Commission was entered without having made a finding that the prescribed routes "were needed in order to provide adequate and more efficient and more economic transportation." The finding of the Commission to that effect is set forth under paragraph XXVIII hereinbefore.

### XXXII

Answering paragraph 32 of said petition, Intervener denies that the operation of the prescribed direct routes would be less adequate and less efficient or less economic from a railroad standpoint than the round-about, back-haul route of the Pennsylvania. It is alleged that said route is so expensive to operate that an addition of 17 per cent in the rate is demanded to cover the extra unneeded and unwanted service of operation, as pointed out in the decision of the Commission, Exhibit B to said petition.

### XXXIII

Answering paragraph 33 of said petition, Intervener denies that the order is arbitrary and without warrant in [fol. 101] law. Intervener denies that the "uncontradicted evidence" shows that the prescribed routes are less efficient and less economic of operation than the existing out-of-line route. It is alleged that said back-haul route requires an addition of 17 per cent to the rates to pay for this unnecessary and unwanted back-haul service, and the repeated switching service involved.

### XXXIV

Answering paragraph 34 of said petition, Intervener denies that the findings of this Commission are without support and are contrary to the evidence.

### XXXV

Answering paragraph 35 of said petition, Intervener denies that the Commission disregarded the "Uncontroverted evidence" and that, therefore, said findings are in violation of the Fifth Amendment to the Constitution. Said evidence of petitioners, along with the controverting evidence of Intervener, is recited in the report of the Commission, and

upon all the evidence of record the Commission in its discretion administered the terms of the Act applicable to the issues presented.

### XXXVI

Answering paragraph 36 of said petition, Intervener denies that the order violates the Fifth Amendment to the Constitution in that it rests upon a violation of Section 3(4) of the Act as to which there was no hearing.

### XXXVII

Answering paragraph 37 of said petition, Intervener denies that the Commission disregarded evidence comparing the present and proposed routes, and based its finding on the failure of the petitioners to obey Section 3(4) of the Act requiring railroads to establish equal facilities for interchange of traffic.

[fol. 102]

### XXXVIII

Answering paragraph 38 of said petition, Intervener denies that in ordering the route through Fulton Junction the Commission acted "without warrant in law" when it stated that the evidence does not show that the operating conditions at Fulton Junction are any more difficult than at Hagerstown. It is alleged that a comparison of the operating conditions as shown of record supports the Commission's finding on this point. It is alleged that the finding as to the routes ordered is based also upon the fact that the present back-haul route involves an out-of-line service of 149 miles, plus repeated expensive switchings at Harrisburg and Hagerstown, whereas, the direct route through Fulton Junction saves all of this unnecessary, unwanted and unneeded service.

### XXXIX

Answering paragraph 39 of said petition, Intervener denies that the order of the Commission is unsupported by evidence showing that the service over the present round-about, back-haul, indirect route is slower than the direct and much shorter routes prescribed by the Commission.

### XL

Answering paragraph 40 of said petition, Intervener denies that the order rests upon a comparison between rail routes and truck routes. As quoted in the answer to para-

graph 21, the Commission states that in order to avoid the slower and unsatisfactory service over the present round-about, back-haul route, petitioner had moved 640 carloads by truck in order to get better service. It is alleged that this truck service will be unnecessary when the direct and quicker rail routes prescribed by the Commission are in operation.

[fol. 103]

### XLI

Answering paragraph 41 of said petition, Intervener denies that the order rests upon a finding that the Pennsylvania is the only carrier short-hauled.

### XLII

Answering paragraph 42 of said petition, Intervener admits that petitioners will incur penalties if they refuse to obey the order of the Commission.

Except as herein expressly admitted, the Intervener denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements of conclusions of fact included in said report and order referred to and made a part of the petition as Exhibit B, which report and order is hereby referred to and made a part hereof.

All of which matters and things the Intervener is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Respectfully submitted, D. A. Stickell & Sons, Inc.,  
Intervener, by C. R. Hillyer, 135 South LaSalle  
Street, Chicago, (3), Illinois. Wagaman & Waga-  
man, Charles F. Wagaman, 2 Court Place, Hagers-  
town, Md. Attorneys for Intervener.

January 6th, 1944.

[fol. 104]

### CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above answer upon each of the following counsel this 6th day of January, 1944, by mailing them a copy thereof:

Edward M. Reidy, Esquire, Assistant Chief Counsel, Interstate Commerce Commission, Washington 25, D. C.

Robert L. Pierce, Esquire, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

William Pepper Constable, Esquire, 1000 Maryland Trust Building, Baltimore 2, Maryland.

Francis R. Cross, Esquire, Baltimore and Ohio Building, Baltimore, Maryland.

Joseph F. Eshelmann, Esquire, Broad Street Station Building, Philadelphia 4, Pennsylvania.

Charles F. Wagaman, Wagaman & Wagaman, Attorneys for Intervener.

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[fol. 105] IN UNITED STATES DISTRICT COURT

[Title omitted]

**Extracts from Stenographer's Notes of Hearing on January 26, 1944**

Baltimore, Maryland, January 26, 1944.

The above-entitled cause came on to be heard before their Honors Judges Morris A. Soper, William C. Coleman and W. Calvin Chestnut, on Wednesday, January 26, 1944, at ten o'clock a. m.

APPEARANCES:

*On behalf of Petitioners:*

Messrs. William Pepper Constable, Francis R. Cross, and Joseph F. Eshelman.

[fol. 106] *Present on behalf of Defendant and Interveners-Defendants:*

Messrs. Edward M. Reidy (Assistant Chief Counsel, Interstate Commerce Commission), Robert L. Pierce (Special Assistant to the Attorney General), C. R. Hillyer, Charles F. Wagaman, and John Wagaman.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Soper: The case on for trial, gentlemen, is the case of The Pennsylvania Railroad and others against the United States.

What arrangement has been made with reference to the trial of the case? Shall we proceed on the pleadings.

Mr. Eshelman: Your Honor, if agreeable, we should like to introduce the evidence, that is to say, the record before the Interstate Commerce Commission as the record here, as our exhibit, plus only one order which was made by them, at the Court's request, postponing the effective date of this order, so that the matter will appear here as it now stands. And then we were going to proceed to argue, if it is agreeable.

Judge Soper: What was the nature of the order postponing the effective date?

Mr. Eshelman: The order was entered at the request of the Court, and postponed the effective date of this order for 90 days, or until March 17, 1944, on a 30 days notice.

The point was that when we first came before the Court with our petition, why, there was a very little time for the Court to convene and get together, so that at the Court's request the Commission postponed the effective date of this order.

Judge Coleman: With the joint request of the parties?

Mr. Eshelman: We presented that to the Commission.

Judge Coleman: Yes.

Judge Soper: Will that be all of the record?

Mr. Eshelman: Yes, sir.

Judge Soper: On both sides? I assume that neither the Petitioners nor the United States has any further evidence to offer.

Mr. Pierce: That is right, Your Honor. [fol. 108] I have a map here I would like to introduce. I do not care whether it goes in evidence, or just to hand it up for argument. But I think it would be convenient for the Court to have it before them.

Mr. Eshelman: Perhaps I should have said the same thing. We have produced copies of Exhibit 66 before the Commission, but we have superimposed on that in color the prescribed routes, as compared with the Pennsylvania's existing routes.

Judge Soper: All right, we will be glad to have them, gentlemen.

Have you copies for each of us?

Mr. Eshelman: Yes, sir.



Judge Coleman: Have you a map big enough to put upon the board, so you can refer to it in the course of the argument?

Mr. Eshelman: Well, I think the detail, Judge Coleman, is a little small for that, I tried to find such a map. But I believe it would be better to use maps which you might individually look at.

Judge Soper: Have you two more copies?

[fol. 109] Judge Coleman: Have you another copy?

Mr. Eshelman: Those, Your Honor, are separate copies.

One shows the route from Chicago to Salisbury, Maryland, and the other from St. Louis to Milford, New Jersey, which are taken as identical.

Judge Coleman: You have not, though, in one map, then—the Railroad has not—the lines showing the ordered route and the existing route.

Mr. Eshelman: Yes, Your Honor, those do show the existing route in red, and the ordered routes in the blue and the brown.

Judge Coleman: On each of these maps?

Mr. Eshelman: On each of those. The brown or the blue routes are the so-called Pittsburgh Dispatch route, or routes Nos. 1 and 2 of the New York Central up to—

Judge Coleman: Have you three of those, three copies?

Mr. Eshelman: You may have my copy. Will you pass that up? That is another set. You will see they are different.

[fol. 110] Judge Soper: These are copies of the same thing you have already handed me?

Mr. Eshelman: Yes, sir, it is an additional one.

Judge Soper: You will be able to explain during the course of the argument the different things on these two copies?

Mr. Eshelman: Yes, Your Honor.

Judge Soper: Now, we are ready to proceed with the argument.

The Court does not desire to limit counsel unduly, but it would be convenient if you could give us some idea of how much time the case should require in argument.

Mr. Eshelman: I should think that on our side we ought to conclude within two hours. And it may be that we shall be able to make more speed and shorten it up. But I think that would be an outside figure.

Judge Soper: How does the Government feel about that?

Mr. Pierce: Two hours will certainly be ample for us. I doubt that we will need that.

[fol. 111] Mr. Eshelman: I rather entertain that hope myself.

Judge Soper: Very well. Whether it is a hope or doubt, we will be glad to have it borne in mind.

Mr. Eshelman: First, may I say that there is——

Judge Soper: Just one moment.

Judge Chesnut: Gentlemen, I ought to say this, that in looking over this long list of the parties in this case, I am reminded that I hold, as trustee or as co-trustee, I think it is two bonds of the Pennsylvania Railroad Company, and I think I might have a bond or two of some of these other roads.

Now, that is a matter for counsel to decide, whether they want to disqualify me or not.

Mr. Pierce: We certainly have no objection, Your Honor.

Judge Chesnut: All right.

Mr. Eshelman: May it please the Court, in our petition, on page 11, in paragraph XVI, we have an error which, with the permission of the Court and the consent of counsel, I would like to have corrected.

[fol. 112] The first word of Paragraph XVI is erroneously shown as "uncontrolled" instead of "uncontroverted."

If this permission is granted, I assume that the Answer of the United States in Paragraph IV, the Answer of the Commission in Paragraph IX, and the Answer of the Stickell Company in Paragraph XVI should likewise conform. Is that agreeable to counsel?

Mr. Reidy: Yes, sir, that is agreeable.

Judge Soper: Will you repeat that correction?

Judge Coleman: Sometimes it is as hard to control testimony as it is controvert it, isn't it? (Laughter)

Mr. Eshelman: The change, Your Honor, is on page 11.

Judge Soper: I get it. "Uncontroverted". And where does that appear on the other side?

Mr. Eshelman: On the other side, in the Answer of the United States, in paragraph IV, the words "uncontrolled or" should be stricken, and in the Answer of the Commission, in paragraph IX, and the Answer of the Stickell Company, in paragraph XVI, the word "uncontroverted"

[fol. 113] should be substituted for the word "uncontrolled".

Judge Soper: Paragraph IV of whose Answer?

Mr. Eshelman: The United States'.

Judge Soper: And paragraph IX?

Mr. Eshelman: Of the Commission.

Judge Soper: And paragraph XVI of Stickell?

Mr. Eshelman: Paragraph XVI of Stickell, yes, sir.

Judge Soper: Very well. Very good.

#### OFFERS IN EVIDENCE

Mr. Eshelman: Now, if it please the Court, I should like to introduce the record before the Interstate Commerce Commission. It is offered under two certificates, one covering the transcript of testimony before the Commission and the exhibits before the Commission, and under the other certificate, the balance of the record.

Counsel for the Commission has seen this; and I understand that he agrees it is the entire record before the Commission.

We should like to offer that.

Judge Soper: Very well.

[fol. 114] Mr. Eshelman: In addition, I should like to offer a certified copy of the Commission's order of November 6, 1943, which postpones the effective date of its order in this case until March 17, 1944, on thirty days' notice.

That means that thirty days before March 17th, or on February 16th, we must, unless the Commission's order is enjoined or stayed, and the order postponed by the Commission at the Court's request, we must file these tariffs under pain of severe penalties.

In this connection—

Judge Soper: Does that mean that there must be, in order to avoid this embarrassment, a request by this Court for further postponement of thirty days before the March date, March 17th?

Mr. Eshelman: Yes, with this proviso, that it is my understanding that it is the Commission's practice in these cases further to postpone the effective date of its order, at the Court's request, as may be needful for the Court's opportunity to consider the case before it.

Judge Soper: Well, may it be understood that that [fol. 115] matter will be taken care of?

Of course, this Court will make every endeavor to give a prompt decision. But if it happens that we do not file one by February 16th, then it may be understood that the matter stands in status quo until the decision is reached.

Mr. Reidy: On behalf of the Commission, I will undertake to prepare such an extension order.

Judge Soper: Very good.

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[fol. 116] IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND

Civil No. 2091

THE PENNSYLVANIA RAILROAD COMPANY, ET AL., Petitioners,

v.

UNITED STATES OF AMERICA, Defendant; INTERSTATE COMMERCE COMMISSION, D. A.; Stickell & Sons, Inc., Interveners-Defendants

Before Soper, United States Circuit Judge, and Coleman and Chesnut, United States District Judges

Argued January 26, 1944

I concur, W. Calvin Chesnut, U. S. District Judge.

I concur, Morris A. Soper, U. S. Circuit Judge.

OPINION—Filed March 2, 1944

COLEMAN, District Judge:

This suit is instituted under Section 17(9) of the Interstate Commerce Act (49 U. S. C. A. Sec. 17(a)) and the provisions of the Act of Congress of October 22, 1913, (c. 32, 38 Stat. 219, 28 U. S. C. A. Secs. 41(28), 43-48), to enjoin the operation and effect of an order of the Interstate Commerce Commission.

This order requires the establishment of certain additional through routes and joint rates and charges applicable thereto, on shipments of grain and grain products, originating at points in States included in what is com-

monly known as Central Territory (defined generally as that territory lying north of the Ohio River, south of the Great Lakes, east of Chicago, St. Louis and Cairo, Illinois, and west of Buffalo and Pittsburgh), and carried to Hagerstown, Maryland. There, the grain and grain products are [fol. 117] allowed to be held over under what is known as a transit privilege, for the purpose of being manufactured into live stock and poultry feed, and then the manufactured product is reshipped to destinations on the lines of the Pennsylvania Railroad east of York, Pennsylvania, and Fulton Junction (Baltimore), and between New York City and Cape Charles, Virginia, inclusive, and more particularly to destination points in Delaware, Maryland and Virginia between the Chesapeake and Delaware Bays, some times called the Del-Mar-Va Peninsula. The Pennsylvania Railroad is the only carrier serving these latter points. The so-called transit privilege allowed at Hagerstown rests, like other transit privileges such as creosoting lumber or fabricating iron and steel, upon the fiction that the incoming and the outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination.

Thirteen carriers affected by this order are the petitioners in the present suit. The defendant is the United States, and interveners-defendants are the Interstate Commerce Commission and D. A. Stickell & Sons, Inc., a Maryland corporation engaged in the milling and mixing of grain, grain products and grain by-products, and in the manufacture of mixed live stock and poultry feed at Hagerstown, Maryland, this company being the original petitioner before the Interstate Commerce Commission on whose complaint the Commission's order here under review was passed.

Independently of the Commission's order, there are, and have been for some time, joint rates in effect on grain and grain products with the so-called transit or mixing privilege at Hagerstown, Maryland and other points, applicable from points of origin in Central Territory, to all points in so-called Trunk Line Territory, which is generally defined as that territory east of Central Territory and west of New England, New York City and Norfolk, Virginia. However, these existing joint rates are restricted by the carriers so that they apply only over certain through routes. For

[fol. 118] example, they do not apply on traffic originating in Central Territory or west thereof, if destined to points on the Pennsylvania Railroad, unless that carrier receives the traffic at or west of Pittsburgh or Buffalo. A similar situation exists with respect to traffic moving over the Baltimore & Ohio Railroad. As a result, these existing through routes of the latter road and of the Pennsylvania, through Hagerstown, embrace out-of-line hauls of 48 and 149 miles, respectively. The Pennsylvania's out-of-line haul is from its Enola Yard, a point on the Susquehanna River opposite Harrisburg to Hagerstown and return, for which out-of-line or back-haul operation, the Pennsylvania charges, in addition to the joint through rate with the transit privilege at Hagerstown (which is  $26\frac{1}{2}\text{¢}$  per 100 pounds from Chicago to Salisbury, Maryland,  $4.5\text{¢}$  per 100 pounds, or  $90\text{¢}$  a ton. It will thus be seen that this additional charge is approximately 17% of the through rate.

The Stickell Company does not contest the reasonableness per se of this back-haul charge or of the joint rates, but claims that this extra charge almost completely destroys its margin of profit on the sale of its products. However, Stickell's basic claim is for better transportation service, on the ground that the existing route via Hagerstown over the Pennsylvania as just described, being indirect with an out-of-line back-haul, is inadequate, inefficient and uneconomical, and results in its shipments being unduly delayed in reaching customer consignees, thus placing it at a disadvantage as respects its competitors not located in Hagerstown but who buy their grain and grain products from the same general territory, and ship to the same markets.

Taking Chicago as a representative point of origin and Salisbury, Maryland, as a representative destination point, one of the new routes to and through Hagerstown, Maryland, ordered by the Commission and designated as route 1, embraces the use of the New York Central to Youngstown, Ohio; the Pittsburgh & Lake Erie from there to Connellsville, Pennsylvania; thence by the Western Maryland to York, Pennsylvania; where the Pennsylvania finally [fol. 119] receives the traffic and hauls it to destination. Similarly, new route 2 ordered by the Commission, embraces the use of the Wabash to Toledo, Ohio, the Wheeling & Lake Erie to Pittsburgh Junction, Ohio, the Pittsburgh & West Virginia to Connellsville, Pennsylvania, and



thereafter the haul being the same as by new route 1 ordered by the Commission. However, such routes short-haul the Pennsylvania, that is to say, require it to embrace in such routes substantially less than the entire length of its lines between the termini of such routes. For example, again using Chicago as a representative origin point and Salisbury, Maryland, as a representative destination point, the distance over the direct route of the Pennsylvania alone, is 902 miles, whereas if the Pennsylvania is required to put into effect the new routes ordered by the Commission whereby it would participate in the traffic only from Fulton Junction, Baltimore, or York, Pennsylvania, its haul would be only 155 miles and 114 miles, respectively, or a reduction of 747 and 788 miles, respectively. This, the Pennsylvania contends, the Commission cannot lawfully require it to do without its consent.

No testimony was taken before this Court, the case being presented on the record of the proceedings before the Interstate Commerce Commission.

Under the provisions of Section 15(3) of the Interstate Commerce Act (49 U. S. C. A. Sec. 15(3)), the Interstate Commerce Commission "may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges . . ." Section 15(4) of the Act, as amended by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15(4)), imposes limitations upon this power of the Commission, as follows: "In establishing any such through route the Commission shall not (except as provided in section 3, (not involved here) and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such [fol. 120] route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) *unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic,*

*transportation: Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."* (Italics inserted).

Relying upon clause (b) of Section 15(4) of the Act just quoted, Stickell, in 1941, filed in a complaint with the Commission against a large number of railroads, seeking the establishment of the two additional through routes and joint rates and charges applicable thereto, which we have just described. After due hearing, at which testimony was taken before an examiner of the Commission, he recommended that the relief sought be granted. The matter came on for argument before Division 2 of the Commission, and [fol. 121] on March 18, 1943, that Division rendered its decision, ordering the establishment of the new through routes. *D. A. Stickell & Sons, Inc. v. The Alton Railroad Co.*, 255 I. C. C. 333. Thereupon, the carriers, pursuant to their statutory right, petitioned the entire Commission to review the decision of Division 2, but the Commission, by order of October 4, 1943, denied, without report, the petition for reargument and reconsideration, although by interim and subsequent orders, it modified its order of March 18, 1943, so as to become effective on March 17, 1944, upon thirty days notice. This effective date has been further extended by the Commission, in view of this pending proceeding, to April 17, 1944. As a result of this action, the carriers involved are required to file with the Commission, not later than March 17, 1944, tariffs establishing the joint rates over the prescribed new through routes, to become

effective not later than April 17, 1944, unless the Commission's order is suspended and annulled by this Court. If such is not done, and petitioners fail to obey the Commission, they would be subject to a penalty of \$5,000 for each day each violation thereof continues (49 U. S. C. A. Sec. 16(8)).

The following passages taken from its report embrace the Commission's reasons for its action (255 I. C. C. 341-344): "It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of section 3(4) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line.

. . . . .

[fol. 122] "Prior to the amendment of section 15 (4), the Commission's power to prescribe through, all-rail, routes which would short haul any carrier participating therein without its consent was limited to instances where the inclusion of the entire length of its railroad between the termini of such route would make the through route unreasonably long as compared with another practicable route which could otherwise be established. While that section limited the powers of the Commission, it left it entirely within the discretion of the carrier as to whether it would insist upon its long haul. It was at liberty to voluntarily join in any route which it believed to be more adequate, efficient, and economical than a route embracing its entire line, although the latter route might not be unreasonably long. Therefore, no exception to the restriction on the Commission's power was necessary to protect carriers' interests.

"As to the shippers, however, a different situation existed. It rests within the power of carriers by insistence on their long hauls to place localities and shippers on the lines of other carriers or not on their direct lines at severe rate

and competitive disadvantages and, as in the instant case, to deprive shippers of relatively equal opportunities to compete in markets served only by them. Carriers in many instances availed themselves of the right to their long haul, and the disadvantaged localities and shippers had no redress. It was to remedy that situation, apparently, that the second exception was added. The Commission was thereby given authority, when it finds that through routes are 'needed in order to provide adequate and more efficient or adequate and more economic transportation,' to require the establishment of such routes although they may short haul one or more of the participating carriers. We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint. That such was the intent of the Congress is evident from the conditions the amendment was apparently designed to correct, from the fact that in the added proviso even the preference to be accorded the originating carrier is made subservient to the public interest, from both limitations on the right of a carrier to retain its long haul, and from the fact that the Congress specifically provided that, as between carriers, 'No through route or joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.'

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact, that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described.

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established,

subject to the lowest through rates contemporaneously maintained on the same commodities from the same origin to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

All parties to the present proceedings concede that clause (a) of Section 15 (4) is not involved, because the existing direct routes are shorter than the proposed routes and the [fol. 124] Commission so found. For example, the distance from Chicago to Salisbury, Maryland, over the direct route of the Pennsylvania is 902 miles, whereas over new route 1 ordered by the Commission, the distance is 946 miles via Fulton Junction (Baltimore), and via York, 958 miles; and over route 2, via Fulton Junction (Baltimore), 938 miles, and via York, 950 miles.

It will thus be seen that two basic questions are presented for decision: First, what is the precise character of the restriction which clause (b) of Section 15 (4) of the Act places upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent; and second, has the Commission, in the present case, exceeded the authority granted it by clause (b)?

#### The Meaning of Clause (b) of Section 15 (4) of the Act

With respect to the interpretation to be given to clause (b) which has not heretofore been construed in any reported court decision, the gist of the carriers' contention is that the Commission is restricted in prescribing through routes to cases where the need is proven for "adequate, and more efficient or more economic" *physical* facilities, instrumentalities and services. That is to say, the carriers contend that the meaning of clause (b) is to make the short-hauling restriction embodied in the initial clauses of Section 15 (4) inapplicable only where existing routes do not provide "adequate, and more efficient or more economic, transportation" in the *operating* sense, that is, as the word "transportation" is defined in Section 1 (3) (a) of the Interstate Commerce Act (49 U. S. C. A. Sec. 1 (3) (a)), which is as follows: "The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any



contract, express or implied, for the use thereof, and all [fol. 125] services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported." The carriers contend that the existing through route is not only entirely adequate but is also more efficient and more economic when tested by an operations' criterion.

On the other hand, the shipper and the Commission contend that the only reasonable interpretation of the exception in clause (b) is that it means, as the Commission held in its opinion, "adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint." In other words, the shipper and the Commission assert that the switching and terminal services at Harrisburg in breaking up through trains from the west, and in diverting shipments for the backhaul of 148 miles to the Pennsylvania's branch line to Hagerstown which runs southwest from Harrisburg, when the ultimate destination of shipments are points east of Harrisburg; that repetition of the same operations when the shipments are returned from Hagerstown to Harrisburg and are there stopped and switched into eastbound trains for movement to destination; and that also the additional delays and terminal services incident to switching cars from the Pennsylvania to the Western Maryland tracks at Hagerstown, and from the Western Maryland back to the Pennsylvania tracks for the movement north from Hagerstown to Harrisburg, are all factors which the Commission was permitted to take into account in determining whether the new through routes prescribed were "needed in order to provide adequate, and more efficient or more economic, transportation."

In order to determine the true meaning of clause (b) and, therefore, the precise extent of the Commission's power under this clause, it is necessary to review its legislative history. The original Act to Regulate Commerce approved February 4, 1887, 24 Stat. L. 379, 384, gave to the Interstate [fol. 126] Commerce Commission no authority to prescribe through routes and joint rates, that power being first conferred by an amendment to Section 15 of the original Act embraced in the Hepburn Act of June 29, 1906, 34 Stat. L. 584, 590, but this power was limited in that it could only be exercised in case "no reasonable or satisfactory through route exists." By the Mann-Elkins Act of June



18, 1910, 36 Stat. L. 539, 552, this limitation was eliminated, but the first so-called short-haul restriction on the Commission's power was enacted as follows: "and in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established." By the Transportation Act of 1920, 41 Stat. L. 456, 485-486, this provision, as well as the general provision for the establishment of through routes and joint rates, was changed, the short-hauling restriction provision being enacted to read as follows (Section 15 (4)): "In establishing any such through route the Commission shall not . . . require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: Provided, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may . . . establish temporarily such through routes as in its opinion are necessary or [fol. 127] desirable in the public interest."

Following the legislation of 1920, the Commission had numerous occasions to construe clause (4) of Section 15 until the year 1929 and it had frequently, but not uniformly, interpreted that provision as protective only of the originating carrier or of a subsequent carrier only after it had obtained possession of the traffic. See, for example, *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C. 621, 630-631 (1913); *Flory Milling Co. v. C. N. E. Ry. Co.*, 93 I. C. C. 129, 134 (1924); *Fort Smith S. & R. I. R. E. Co. v. A. & V. Ry. Co.*, 107 I. C. C. 523 (1926); *Routing of Grain*, 147 I. C. C. 782, 784 (1928). However, in 1929, the Supreme Court was called upon to construe clause (4) of

Section 15 in *United States v. Missouri Pacific R. R. Co.*, 278 U. S. 269, commonly known as the Subiaco Case, the complaint having been initiated by the Fort Smith, Subiaco & Rock Island R. R. Co. v. *The Missouri Pacific R. R. Co.*, and a large number of other rail carriers. The Commission made an order establishing through routes for west-bound traffic over the Subiaco. The Missouri Pacific sued to set aside the order, and a District Court, composed of three judges, held that the Commission was without power to establish the routes. 21 F. (2d) 351. The United States, the Commission and the Subiaco appealed and the lower court was affirmed, the Supreme Court holding that the protection granted by Section 15 (4) against short-hauling was not limited to the originating carrier or to a subsequent carrier getting possession of the traffic, but that it operated as a restriction upon the Commission's right to prescribe through routes which would short-haul *any* of the participating carriers.

Prior to this decision, there was pending before the Commission a proceeding instituted by Stickell & Sons, the same shipper that is complainant in the present case, for the establishment of additional through routes and joint rates on grain and grain products via Hagerstown, subject to transit privileges at that point, similar to those required by the Commission's present order here under review. In [fol. 128] 1928, in *Stickell & Sons. v. Western Maryland Railway Co.*, 146 I. C. C. 609, the Commission found the establishment of these through routes and joint rates desirable in the public interest. A further hearing, however, was ordered in that case, but before the Commission made its final report, the Supreme Court rendered its decision in the Subiaco case, *supra*. Thereupon, the Commission, in a second report (153 I. C. C. 759) held that protection of the long hauls of the carriers involved was not shown to result in routes unreasonably long in comparison with those which complainant sought, and therefore, the Commission found that it was without power to require the establishment of additional through routes.

Following this decision, the Commission, in several of its annual reports to Congress, urged an amendment which would overcome this decision, and various bills were introduced in Congress for this purpose. However, no change was made in Section 15 (4) until the passage in 1940 of

the Transportation Act, when the law as it now stands was enacted, embracing clause (b) which we have heretofore quoted and which is the provision here in issue.

So much for the evolution of the clause which we are called upon to interpret. This summary of the various legislative enactments which finally resulted in its adoption may be said still to leave some doubt as to the precise intent that lay behind the adoption by Congress of the phraseology of clause (b). In other words, a mere chronology of the various legislative steps fails to explain just how far Congress intended the Commission might go in invoking clause (b). However, reports of Congressional committees and explanatory statements made by their members in presenting a bill for passage are legitimate aids to the interpretation of a statute if there is any doubt as to the intended meaning of the language employed. *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S. 184; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *Wisconsin Railroad Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563; *United States v. Missouri Pacific Railway Co.*, *supra*. See also, *Helvering v. Griffiths*, 318 U. S. 371. Therefore, it is appropriate for us to resort to such inter-[fol. 129] pretative aids in the present case.

First, it is appropriate to note, because not disputed, that the Commission requested of Congress complete authority to fix through routes and joint rates with no limitation other than that there must be proven need for same *in the public interest*. But Congress ultimately refused to go this far. In the bill which finally became the Transportation Act of 1940, 54 Stat. L. 898, and bore Senate number 2009 as first passed by the Senate (76th Cong. 1st Ses.), the short-haul restriction had been entirely eliminated from Section 15 (4). The House amended the bill and reinserted Section 15 (4). Thereupon, clause (b) was written into the bill by the Conference Committee on the disagreeing votes of the two Houses, in the form in which it was finally enacted. The report of the Conference Committee as submitted to the House contains an explanatory statement by Mr. Lea concerning the short-haul provision in which is to be found the following (H. R. Report, No. 2832, 76th Congress, 1st sess. pp. 70-71): "The House amendment made no change in the short-haul provision of section 15 (4) and the exceptions thereto. The Conference substitute in section 10 (b) retains them and includes another excep-

tion by proving that the restriction against short-hauling a rail carrier shall not apply where the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation. The Commission, in the exercise of this additional authority, is directed to give reasonable preference in any particular case to the carrier by railroad which originates the traffic, so far as is consistent with the public interest and subject to the limitations with respect to unreasonably long routes and the necessity of providing adequate and more efficient or more economic transportation. The Commission is prohibited from establishing any through route and joint rates applicable thereto for the purpose of assisting any carrier that would participate therein to meet its financial needs."

[fol. 130] There is little to be derived from other Committee reports which throws any further light upon just what meaning Congress intended to attach to the use of the words "adequate, and more efficient or more economic transportation." The carriers' brief is replete with extensive quotations of statements made by railroad witnesses at hearings which were held before various Congressional committees in connection with a number of independent through route bills which, however, were never enacted. The carriers stress the fact that these witnesses used the words "efficient" and "economic" from a railroad operating standpoint. However, conceding that they did, and apart from any question as to our right to resort to such statements as an aid in interpreting the meaning of a statute (in *Helvering v. Griffiths*, supra, the Supreme Court would appear to indicate, contrary to its earlier decisions, that *any* statement or debate made in Congress relative to a particular bill may be resorted to as an interpretative aid in case of doubt as to its meaning as enacted) we conclude that, with the legislative history and background which we have just reviewed, the better view is that the words employed in clause (b) clearly indicate that Congress must have intended the broad meaning which the Commission has given to these words, rather than the restricted meaning upon which the carriers are insisting.

For example, one of the prerequisites of clause (b) before the new through route may be established is that it is needed in order to provide "adequate transportation". Obviously, Congress could not have been referring to the

carriers by employing these words because it would be meaningless to speak of the railroad itself needing "adequate transportation". On the other hand, it is a truism to say that the shipping public may have need for such. It is true the adjective "adequate" does not stand alone but is coupled with the adjectives "efficient" and "economic", and these adjectives, of course, must reasonably be construed as referring either to the services received by the shipper or to operations from the railroad standpoint, or to both. Since all three adjectives employed qualify [fol. 131] ify the same noun, "transportation", and since, as we have seen, it would not be sensible to say that the noun when qualified by the first of these adjectives was intended to relate to something which the carrier, as opposed to the shipper, needed, it is, therefore, entirely reasonable to say that the other two adjectives must be taken as having been employed for the purpose of qualifying the same noun when used in the latter sense, but also when used in an operating sense because their qualifying of the noun "transportation," unlike the adjective "adequate", is just as meaningful with reference to carriers' as to shippers' needs.

Language somewhat similar to that under discussion is to be found in Section 15 (a) (2) of the Interstate Commerce Act as amended by the Act of June 16, 1933 (48 Stat. 220), as follows: "In the exercise of its power to prescribe just and reasonable rates The Commission shall [fol. 132] *give due consideration*, among other factors • • • *to the need, in the public interest of adequate and efficient railway transportation service* at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Italics inserted). Also, in the further amendment of this Section by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15 (a) (2)), we find the identical language. It will thus be seen that the phraseology now before us is in effect merely an abbreviation of the phraseology which Congress had previously employed in another part of the Interstate Commerce Act as early as 1933. There can be no doubt as to the meaning of the language then and there employed, because it is plain and unambiguous to the effect that the needs of both the shipping public and the carriers must be safeguarded. Thus, it is only



logical to say that when Congress employed similar but somewhat abbreviated language in Section 15 (4) (b), it did so with the same purpose in mind.

Support for this view is found in decisions of the Supreme Court construing the term "public interest" in the Transportation Act of 1920, the Emergency Railroad Transportation Act of 1933, and the Transportation Act of 1940. For example, in *New York Central Securities Co. v. United States*, 287 U. S. 12, in referring to the criterion, "public interest", as used in Section 5 of the Interstate Commerce Act (as amended by the Transportation Act of 1920), whereby consolidations of carriers were permitted when the Commission found them to be in the "public interest", the Court said (pages 24-25): "Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the 'public interest'. It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of [fol.133] the Act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service. . . . The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but *has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency*, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred." (Italics inserted).

This language has been adopted and quoted in several later decisions of the Supreme Court, relating to carrier consolidations. For example, we find reaffirmance of it in *Texas v. United States*, 292 U. S. 522, 531; in *United States v. Lowden*, 308 U. S. 225, 230, and again, in a very recent decision, *McLean Trucking Co. v. United States*, decided January 17, 1944, where the following is said, (page —): "The national transportation policy is the



product of a long history of trial and error by Congress in attempting to regulate the nation's transportation facilities beginning with the Interstate Commerce Act of 1887. For present purposes it is not necessary to trace the history of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts. 'Thereto-fore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates; 'and emphasis on the preservation of free competition among carriers was part of that effort. The act of 1920 added 'a new and important [fol. 134] object to previous interstate commerce legisla-tion.' It sought 'affirmatively to build up a system of railways prepared to handle promptly the interstate traffic of the country.' *Dayton-Goose Creek R. R. v. United States*, 263 U. S. 456, 478; *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277. And in administering it, the Commission was to be guided primarily by consid-eration for 'adequacy of transportation service, . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facil-ities . . . ' *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25."

It is to be noted that Section 15 (3), upon which Section 15 (4) of the Act is a limitation, employs the term "public interest". Thus, although Congress did not add the word "service" after the word "transportation" in clause (b) of Section 15 (4), as the Supreme Court did when referring to adequate, economic and efficient transportation in *New York Central Securities v. United States*, and the later de-cisions, *supra*, adopting the same view, it is only reason-able to assume that Congress meant the same thing. If further support be needed for this conclusion, we feel that it is to be found in the declaration of a national transporta-tion policy as defined in the Transportation Act of 1940 (49 U. S. C. A. Sec. 301, note), which asserts that "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regula-tion of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to *promote safe, adequate, economical and efficient service* and foster sound economic

conditions in transportation and among the several carriers • • •" (*Italics inserted*).

We find nothing inconsistent with the foregoing in the [fol. 135] definition of the term "transportation" as explained in Section 1 (3) (a) of the Act (49 U. S. C. A. Sec. 1 (3) (a)) which we have heretofore quoted, and upon which the carriers place much reliance, because this definition is one of expansion, of inclusion rather than of limitation; and furthermore, while it is true that it embraces "instrumentalities and facilities of shipment or carriage", it equally embraces "all services" in connection with the receipt, transportation, delivery and handling in any form of shipments consigned to carriers. In short, it would be absurd to say that this use of the word "services" is not confirmatory of the basic policy to safeguard the shippers' interests.

It is to be noted that Section 15 (4), in the proviso immediately following clause (b), recites "that in prescribing through routes the Commission shall, *so far as is consistent with the public interest*, and subject to the foregoing limitations of clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic." (*Italics inserted*).

So the Commission cannot preserve the long-haul even to the originating carrier if such would be contrary to the public interest, namely, in such case, the shipping public. The carriers contend that if the Commission's interpretation of clause (b) is allowed to stand, a carrier may be short-hauled every time a shipper can show that it will be cheaper or more efficient from his standpoint alone, if that is done. This is not our view. Under the construction which we give to clause (b), even if the shipper is able to prove that the proposed new route would give him more efficient or more economic transportation,—better (as for example quicker) or cheaper service,—since, by the express language of paragraph (3) of Section 15, the Commission may never establish a through route unless "deemed by it to be necessary or desirable in the public interest," we have no doubt but that this language, fairly interpreted, [fol. 136] must be taken to include also considerations of railroad operating efficiency and economy, which, in a given case, may control over considerations in the shipper's favor.

Finally, we feel we scarcely need say more to make it clear that the Transportation Act of 1940, is very broad, remedial legislation. For this reason, as the Supreme Court has said about the Transportation Act of 1920, it should "be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended." *Piedmont & Northern Railway v. Interstate Commerce Commission*, 286 U. S. 299, 311-312. See also, *McDonald v. Thompson*, 305 U. S. 263, 266; *Gregg Cartage Co. v. United States*, 316 U. S. 74, 83.

To summarize our conclusions as to the precise character of the restriction which clause (b) of Section 15 (4) of the Act imposes upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent, we are of the opinion that the exception embodied in that clause must be interpreted to mean "adequate, and more efficient or more economic, transportation" from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier.

Having thus interpreted clause (b) of Section (4), we now turn to a consideration of the question whether the Commission, in the present case, has, as the carriers contend, exceeded the authority granted it by this clause.

#### [fol. 137]      The Commission's Findings

The principal findings of fact made by the Commission may be summarized as follows: The margin of profit of Stickell's products is small. The two principal items involved in the prices at which these products are sold are the amounts paid for the ingredients and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, New York; Fort Wayne and Indianapolis, Indiana; Cincinnati, Toledo, Cleveland and Akron, Ohio; and Pittsburgh, Lancaster and York, Pennsylvania, can reach the markets in Delaware, Maryland and Virginia, between the Chesapeake and Delaware Bays, in competition with Stickell, at the same through rates as Stickell. However, Stickell, on grain purchased at these same points of origin when the Pennsylvania receives the traffic at or west of Pitts-

burgh or Buffalo, must pay 90¢ a ton more, or, when other carriers perform the in-bound haul, then must pay combination rates. The new through rates in controversy are well established up to Hagerstown and are generally accepted as reasonable by both shippers and carriers to points in eastern territory. There is no proof that those routes would be less economical as parts of the entire new through routes to destinations in question on the Pennsylvania, than to destinations on the other carriers' lines in eastern territory. On the contrary, the new routes would not result in any cross-haul but would eliminate an out-of-line haul of 149 miles and two switching interchanges at Hagerstown, and would relieve the Pennsylvania of the expense of maintaining the transit privilege or service, and of absorbing the switching charges at Hagerstown, where the Western Maryland would bear all transit and switching expense.

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction (the junction points that would be utilized under the new through routes) once every twenty-four hours; and while the interchange tracks [fol. 138] at those junction points are now used to near, and some times to full capacity, operating conditions there are no more difficult than operating conditions now encountered at Hagerstown.

One day is required for transportation each way between Harrisburg and Hagerstown, and one day for each interchange, between the Western Maryland and the Pennsylvania at Hagerstown, or a total of four days consumed in the out-of-line haul, and on the average, an additional three to four days is required for the movement of a car from Stickell's plant to destination points in Delaware, Maryland and Virginia; whereas, based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, and on the fact that a car leaving Hagerstown via the Western Maryland late in the morning, arrives at Elsmere Junction (Wilmington, Delaware) on the Reading, the next morning, Stickell's estimate that there would be saved two days in reaching these destination points over the new through routes, is to be accepted as correct, because there is no categorical denial of same by the Pennsylvania, supported by concrete statistical data.

The Commission relied upon a further finding that in order to meet the demands of customers for prompt delivery, complainants had shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading to Elsmere Junction, thence by truck to points on the Delaware, Maryland, Virginia Peninsula.

We are fully satisfied, after an examination of the record before the Commission, that it contains ample, substantial evidence to support all of the findings of fact made by the Commission which we have just summarized, and that being the case, we are equally satisfied that these facts amply support the Commission's ultimate finding (255 I. C. C. 333 at 344) "that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation," within the meaning which [fol. 139] we have found in the earlier part of this opinion must be given to clause (b) of Section 15(4).

This Court may not disturb findings of fact made by the Commission unless it has acted arbitrarily or without substantial evidence to support its conclusions, or has transcended its Constitutional or statutory powers. *Interstate Commerce Commission v. Delaware, L. & W. Rwy. Co.*, 220 U. S. 235; *Proctor & Gamble v. United States*, 225 U. S. 282, *United States v. Louisville & Nashville R. R. Co.*, 235 U. S. 314, *Standard Oil Co. v. United States*, 283, U. S. 235, *B. & O. R. R. Co. v. United States*, 298 U. S. 349, *Purcell v. United States*, 315 U. S. 381, *Interstate Commerce Commission v. Hoboken Mfgs. R. R. Co.* decided December 6, 1943. In other words, the credibility of witnesses and the weight of the evidence are matters for the Commission and not for the courts to determine, and the Commission's findings in these respects cannot be reviewed by the courts if supported by substantial evidence.

Of course, the Commission would clearly not be justified in attempting to neutralize the disadvantage of geographical location such as Stickell has, by requiring of a carrier wasteful or additional service, without adequate compensation, even though Stickell might, for competitive or other business reasons, be in dire need thereof. But, there is an absence of any convincing evidence in the present case that through the establishment of the new through routes the Pennsylvania would not be adequately compensated or that its facilities or services which it owes to other shippers



generally would be interfered with. The rates are to be the same for the new routes as for the existing ones. It is significant also, that Stickell's plant is not located upon the Pennsylvania Railroad at Hagerstown but upon the Western Maryland Railway. The latter carrier does not appear as a protestant of the Commission's action.

The gist of the carriers' contention as developed in the extensive arguments and briefs presented by their counsel, [fol. 140] appears to be that in order to support the Commission's findings it must appear that the Commission itself found two things to be a fact: First, that the existing through route is inadequate; and second, that the prescribed new routes will be either more efficient or more economic from carriers' operating standpoint. Since, as it is contended, the Commission has found that the existing route is adequate, a finding of one of the prerequisites being lacking, the Commission's ultimate conclusion must be rejected.

This argument, we believe, is without merit. It is based upon the false promise that the short-hauling limitation in Section 15 (4) of the Act cannot be subject to *any* exception by virtue of clause (b) as long as there is *any* through route between the given termini which is satisfactory to other shippers; in other words, that there is no authority for ordering a through route to pass through any particular intermediate point. While, of course, it is true, there is no express requirement of law that routes *must* pass through particular intermediate points, and neither the short-hauling provisions nor any other provision of the Act can be read as implying such requirement (*United States v. Missouri Pacific R. R. Co.*, and *Stickell & Sons v. Western Maryland Railway Co.*, *supra*), it is illogical to say that where a carrier, as is true in the present case, is already serving a shipper by one through route, such shipper may not be heard on the question, and have the Commission determine whether he is entitled to a different and more advantageous through route. Thus, when the Commission found (255 I. C. C. 340) "that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destina-



the Transportation Act, when the law as it now stands was enacted, embracing clause (b) which we have heretofore quoted and which is the provision here in issue.

So much for the evolution of the clause which we are called upon to interpret. This summary of the various legislative enactments which finally resulted in its adoption may be said still to leave some doubt as to the precise intent that lay behind the adoption by Congress of the phraseology of clause (b). In other words, a mere chronology of the various legislative steps fails to explain just how far Congress intended the Commission might go in invoking clause (b). However, reports of Congressional committees and explanatory statements made by their members in presenting a bill for passage are legitimate aids to the interpretation of a statute if there is any doubt as to the intended meaning of the language employed. *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S. 184; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *Wisconsin Railroad Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563; *United States v. Missouri Pacific Railway Co.*, *supra*. See also, *Helvering v. Griffiths*, 318 U. S. 371. Therefore, it is appropriate for us to resort to such interpretative aids in the present case.

First, it is appropriate to note, because not disputed, that the Commission requested of Congress complete authority to fix through routes and joint rates with no limitation other than that there must be proven need for same *in the public interest*. But Congress ultimately refused to go this far. In the bill which finally became the Transportation Act of 1940, 54 Stat. L. 898, and bore Senate number 2009 as first passed by the Senate (76th Cong. 1st Ses.), the short-haul restriction had been entirely eliminated from Section 15 (4). The House amended the bill and reinserted Section 15 (4). Thereupon, clause (b) was written into the bill by the Conference Committee on the disagreeing votes of the two Houses, in the form in which it was finally enacted. The report of the Conference Committee as submitted to the House contains an explanatory statement by Mr. Lea concerning the short-haul provision in which is to be found the following (H. R. Report, No. 2832, 76th Congress, 1st sess. pp. 70-71): "The House amendment made no change in the short-haul provision of section 15 (4) and the exceptions thereto. The Conference substitute in section 10 (b) retains them and includes another excep-

tion by proving that the restriction against short-hauling a rail carrier shall not apply where the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation. The Commission, in the exercise of this additional authority, is directed to give reasonable preference in any particular case to the carrier by railroad which originates the traffic, so far as is consistent with the public interest and subject to the limitations with respect to unreasonably long routes and the necessity of providing adequate and more efficient or more economic transportation. The Commission is prohibited from establishing any through route and joint rates applicable thereto for the purpose of assisting any carrier that would participate therein to meet its financial needs."

[fol. 130] There is little to be derived from other Committee reports which throws any further light upon just what meaning Congress intended to attach to the use of the words "adequate, and more efficient or more economic transportation." The carriers' brief is replete with extensive quotations of statements made by railroad witnesses at hearings which were held before various Congressional committees in connection with a number of independent through route bills which, however, were never enacted. The carriers stress the fact that these witnesses used the words "efficient" and "economic" from a railroad operating standpoint. However, conceding that they did, and apart from any question as to our right to resort to such statements as an aid in interpreting the meaning of a statute (in *Helvering v. Griffiths*, supra, the Supreme Court would appear to indicate, contrary to its earlier decisions, that *any* statement or debate made in Congress relative to a particular bill may be resorted to as an interpretative aid in case of doubt as to its meaning as enacted) we conclude that, with the legislative history and background which we have just reviewed, the better view is that the words employed in clause (b) clearly indicate that Congress must have intended the broad meaning which the Commission has given to these words, rather than the restricted meaning upon which the carriers are insisting.

For example, one of the prerequisites of clause (b) before the new through route may be established is that it is needed in order to provide "adequate transportation". Obviously, Congress could not have been referring to the

carriers by employing these words because it would be meaningless to speak of the railroad itself needing "adequate transportation". On the other hand, it is a truism to say that the shipping public may have need for such. It is true the adjective "adequate" does not stand alone but is coupled with the adjectives "efficient" and "economic", and these adjectives, of course, must reasonably be construed as referring either to the services received by the shipper or to operations from the railroad standpoint, or to both. Since all three adjectives employed qualify [fol. 131] ify the same noun, "transportation", and since, as we have seen, it would not be sensible to say that the noun when qualified by the first of these adjectives was intended to relate to something which the carrier, as opposed to the shipper, needed, it is, therefore, entirely reasonable to say that the other two adjectives must be taken as having been employed for the purpose of qualifying the same noun when used in the latter sense, but also when used in an operating sense because their qualifying of the noun "transportation," unlike the adjective "adequate", is just as meaningful with reference to carriers' as to shippers' needs.

Language somewhat similar to that under discussion is to be found in Section 15 (a) (2) of the Interstate Commerce Act as amended by the Act of June 16, 1933 (48 Stat. 220), as follows: "In the exercise of its power to prescribe just and reasonable rates The Commission shall [fol. 132] *give due consideration*, among other factors • • • *to the need, in the public interest of adequate and efficient railway transportation service* at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Italics inserted). Also, in the further amendment of this Section by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15 (a) (2)), we find the identical language. It will thus be seen that the phraseology now before us is in effect merely an abbreviation of the phraseology which Congress had previously employed in another part of the Interstate Commerce Act as early as 1933. There can be no doubt as to the meaning of the language then and there employed, because it is plain and unambiguous to the effect that the needs of both the shipping public and the carriers must be safeguarded. Thus, it is only

logical to say that when Congress employed similar but somewhat abbreviated language in Section 15 (4) (b), it did so with the same purpose in mind.

Support for this view is found in decisions of the Supreme Court construing the term "public interest" in the Transportation Act of 1920, the Emergency Railroad Transportation Act of 1933, and the Transportation Act of 1940. For example, in *New York Central Securities Co. v. United States*, 287 U. S. 12, in referring to the criterion, "public interest", as used in Section 5 of the Interstate Commerce Act (as amended by the Transportation Act of 1920), whereby consolidations of carriers were permitted when the Commission found them to be in the "public interest", the Court said (pages 24-25): "Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the 'public interest'. It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of [fol. 133] the Act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service . . . . The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but *has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred.*" (Italics inserted).

This language has been adopted and quoted in several later decisions of the Supreme Court, relating to carrier consolidations. For example, we find reaffirmance of it in *Texas v. United States*, 292 U. S. 522, 531; in *United States v. Lowden*, 308 U. S. 225, 230, and again, in a very recent decision, *McLean Trucking Co. v. United States*, decided January 17, 1944, where the following is said, (page —): "The national transportation policy is the

product of a long history of trial and error by Congress in attempting to regulate the nation's transportation facilities beginning with the Interstate Commerce Act of 1887. For present purposes it is not necessary to trace the history of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts. 'Therefore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates; and emphasis on the preservation of free competition among carriers was part of that effort. The act of 1920 added 'a new and important [fol. 134] object to previous interstate commerce legislation.' It sought 'affirmatively to build up a system of railways prepared to handle promptly the interstate traffic of the country.' *Dayton-Goose Creek R. R. v. United States*, 263 U. S. 456, 478; *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277. And in administering it, the Commission was to be guided primarily by consideration for 'adequacy of transportation service, . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facilities . . . ' *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25."

It is to be noted that Section 15 (3), upon which Section 15 (4) of the Act is a limitation, employs the term "public interest". Thus, although Congress did not add the word "service" after the word "transportation" in clause (b) of Section 15 (4), as the Supreme Court did when referring to adequate, economic and efficient transportation in *New York Central Securities v. United States*, and the later decisions, *supra*, adopting the same view, it is only reasonable to assume that Congress meant the same thing. If further support be needed for this conclusion, we feel that it is to be found in the declaration of a national transportation policy as defined in the Transportation Act of 1940 (49 U. S. C. A. Sec. 301, note), which asserts that "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and foster sound economic



conditions in transportation and among the several carriers \* \* \*." (Italics inserted).

We find nothing inconsistent with the foregoing in the [fol. 135] definition of the term "transportation" as explained in Section 1 (3) (a) of the Act (49 U. S. C. A. Sec. 1 (3) (a)) which we have heretofore quoted, and upon which the carriers place much reliance, because this definition is one of expansion, of inclusion rather than of limitation; and furthermore, while it is true that it embraces "instrumentalities and facilities of shipment or carriage", it equally embraces "all services" in connection with the receipt, transportation, delivery and handling in any form of shipments consigned to carriers. In short, it would be absurd to say that this use of the word "services" is not confirmatory of the basic policy to safeguard the shippers' interests.

It is to be noted that Section 15 (4), in the proviso immediately following clause (b), recites "that in prescribing through routes the Commission shall, *so far as is consistent with the public interest*, and subject to the foregoing limitations of clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic." (Italics inserted).

So the Commission cannot preserve the long-haul even to the originating carrier if such would be contrary to the public interest, namely, in such case, the shipping public. The carriers contend that if the Commission's interpretation of clause (b) is allowed to stand, a carrier may be short-handed every time a shipper can show that it will be cheaper or more efficient from his standpoint alone, if that is done. This is not our view. Under the construction which we give to clause (b), even if the shipper is able to prove that the proposed new route would give him more efficient or more economic transportation,—better (as for example quicker) or cheaper service,—since, by the express language of paragraph (3) of Section 15, the Commission may never establish a through route unless "deemed by it to be necessary or desirable in the public interest," we have no doubt but that this language, fairly interpreted, [fol. 136] must be taken to include also considerations of railroad operating efficiency and economy, which, in a given case, may control over considerations in the shipper's favor.



Finally, we feel we scarcely need say more to make it clear that the Transportation Act of 1940, is very broad, remedial legislation. For this reason, as the Supreme Court has said about the Transportation Act of 1920, it should "be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended." *Piedmont & Northern Railway v. Interstate Commerce Commission*, 286, U. S. 299, 311-312. See also, *McDonald v. Thompson*, 305 U. S. 263, 266; *Gregg Cartage Co. v. United States*, 316 U. S. 74, 83.

To summarize our conclusions as to the precise character of the restriction which clause (b) of Section 15 (4) of the Act imposes upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent, we are of the opinion that the exception embodied in that clause must be interpreted to mean "adequate, and more efficient or more economic, transportation" from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier.

Having thus interpreted clause (b) of Section (4), we now turn to a consideration of the question whether the Commission, in the present case, has, as the carriers contend, exceeded the authority granted it by this clause.

#### [fol. 137]      The Commission's Findings

The principal findings of fact made by the Commission may be summarized as follows: The margin of profit of Stickell's products is small. The two principal items involved in the prices at which these products are sold are the amounts paid for the ingredients and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, New York; Fort Wayne and Indianapolis, Indiana; Cincinnati, Toledo, Cleveland and Akron, Ohio; and Pittsburgh, Lancaster and York, Pennsylvania, can reach the markets in Delaware, Maryland and Virginia, between the Chesapeake and Delaware Bays, in competition with Stickell, at the same through rates as Stickell. However, Stickell, on grain purchased at these same points of origin when the Pennsylvania receives the traffic at or west of Pitts-

burgh or Buffalo, must pay 90¢ a ton more, or, when other carriers perform the in-bound haul, then must pay combination rates. The new through rates in controversy are well established up to Hagerstown and are generally accepted as reasonable by both shippers and carriers to points in eastern territory. There is no proof that those routes would be less economical as parts of the entire new through routes to destinations in question on the Pennsylvania, than to destinations on the other carriers' lines in eastern territory. On the contrary, the new routes would not result in any cross-haul but would eliminate an out-of-line haul of 149 miles and two switching interchanges at Hagerstown, and would relieve the Pennsylvania of the expense of maintaining the transit privilege or service, and of absorbing the switching charges at Hagerstown, where the Western Maryland would bear all transit and switching expense.

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction (the junction points that would be utilized under the new through routes) once every twenty-four hours; and while the interchange tracks [fol. 138] at those junction points are now used to near, and some times to full capacity, operating conditions there are no more difficult than operating conditions now encountered at Hagerstown.

One day is required for transportation each way between Harrisburg and Hagerstown, and one day for each interchange, between the Western Maryland and the Pennsylvania at Hagerstown, or a total of four days consumed in the out-of-line haul, and on the average, an additional three to four days is required for the movement of a car from Stickell's plant to destination points in Delaware, Maryland and Virginia; whereas, based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, and on the fact that a car leaving Hagerstown via the Western Maryland late in the morning, arrives at Elsmere Junction (Wilmington, Delaware) on the Reading, the next morning, Stickell's estimate that there would be saved two days in reaching these destination points over the new through routes, is to be accepted as correct, because there is no categorical denial of same by the Pennsylvania, supported by concrete statistical data.

The Commission relied upon a further finding that in order to meet the demands of customers for prompt delivery, complainants had shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading to Elsmere Junction, thence by truck to points on the Delaware, Maryland, Virginia Peninsula.

We are fully satisfied, after an examination of the record before the Commission, that it contains ample, substantial evidence to support all of the findings of fact made by the Commission which we have just summarized, and that being the case, we are equally satisfied that these facts amply support the Commission's ultimate finding (255 I. C. C. 333 at 344) "that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation," within the meaning which [fol. 139] we have found in the earlier part of this opinion must be given to clause (b) of Section 15(4).

This Court may not disturb findings of fact made by the Commission unless it has acted arbitrarily or without substantial evidence to support its conclusions, or has transcended its Constitutional or statutory powers. *Interstate Commerce Commission v. Delaware, L. & W. Rwy. Co.*, 220 U. S. 235; *Proctor & Gamble v. United States*, 225 U. S. 282; *United States v. Louisville & Nashville R. R. Co.*, 235 U. S. 314; *Standard Oil Co. v. United States*, 283, U. S. 235; *B. & O. R. R. Co. v. United States*, 298 U. S. 349; *Purcell v. United States*, 315 U. S. 381; *Interstate Commerce Commission v. Hoboken Mfgs. R. R. Co.* decided December 6, 1943. In other words, the credibility of witnesses and the weight of the evidence are matters for the Commission and not for the courts to determine, and the Commission's findings in these respects cannot be reviewed by the courts if supported by substantial evidence.

Of course, the Commission would clearly not be justified in attempting to neutralize the disadvantage of geographical location such as Stickell has, by requiring of a carrier wasteful or additional service, without adequate compensation, even though Stickell might, for competitive or other business reasons, be in dire need thereof. But, there is an absence of any convincing evidence in the present case that through the establishment of the new through routes, the Pennsylvania would not be adequately compensated or that its facilities or services which it owes to other shippers

generally would be interfered with. The rates are to be the same for the new routes as for the existing ones. It is significant also, that Stickell's plant is not located upon the Pennsylvania Railroad at Hagerstown but upon the Western Maryland Railway. The latter carrier does not appear as a protestant of the Commission's action.

The gist of the carriers' contention as developed in the extensive arguments and briefs presented by their counsel, [fol. 140] appears to be that in order to support the Commission's findings it must appear that the Commission itself found two things to be a fact: First, that the existing through route is inadequate; and second, that the prescribed new routes will be either more efficient or more economic from carriers' operating standpoint. Since, as it is contended, the Commission has found that the existing route is adequate, a finding of one of the prerequisites being lacking, the Commission's ultimate conclusion must be rejected.

This argument, we believe, is without merit. It is based upon the false promise that the short-hauling limitation in Section 15 (4) of the Act cannot be subject to *any* exception by virtue of clause (b) as long as there is *any* through route between the given termini which is satisfactory to other shippers; in other words, that there is no authority for ordering a through route to pass through any particular intermediate point. While, of course, it is true, there is no express requirement of law that routes *must* pass through particular intermediate points, and neither the short-hauling provisions nor any other provision of the Act can be read as implying such requirement (*United States v. Missouri Pacific R. R. Co.*, and *Stickell & Sons v. Western Maryland Railway Co.*, *supra*), it is illogical to say that where a carrier, as is true in the present case, is already serving a shipper by one through route, such shipper may not be heard on the question, and have the Commission determine whether he is entitled to a different and more advantageous through route. Thus, when the Commission found (255 I. C. C. 340) "that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destina-

tions," this is not to be taken as a finding which precluded [fol. 141] the Commission from determining whether Stickell is getting, by reason of such routes, all the through route service that it is entitled to. In short, as we interpret the law, Stickell has the right to have its individual case considered from the point of view whether it is entitled to a route that is not *only* adequate, but *also* affords it "more efficient",—that is, better,—or "more economic"—that is cheaper,—transportation service.

The record before the Commission shows that other plants on branch lines of the Pennsylvania are subject to back-hauls and back-haul charges. For example, a plant at Bedford, Pennsylvania, is charged 3c. Another plant at Reading, Pennsylvania, is charged 3¼¢, and one at Frederick, Maryland, 3¾¢. But this is merely evidence of a practice and is not probative of the fairness of such practice when applied to the circumstances surrounding Stickell. Indeed, as the Commission very appropriately pointed out (255 I. C. C. 333 at 342). "The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes which do not."

We may assume the correctness of the carriers' evidence that via the prescribed new routes the total elapsed time for shipments to move from origin to destination points would, generally speaking, be longer than over the existing route. But this is not controlling, because what Stickell is most concerned with is prompt delivery of its *products*. As to them, there is no *through* movement except in the fictional sense. Of course, Stickell must count upon receiving its grain and grain products with reasonable promptness, so as to have on hand sufficient materials out of which to manufacture its products. But, practically speaking, the time taken for a carload of grain to reach the plant, would not [fol. 142] control the time when a carload of the finished product would leave the plant. It is the movement from plant to customer that is really at issue.

Likewise, we believe the Commission was correct in rejecting the contentions of the Pennsylvania that the routes sought are not "necessary and desirable" in the public interest because the request for same was not supported by any shipper of grain or grain products at points of origin, or by any receiver or consumer of the mixed feed at destination points. Stickell's business is substantial. Its annual



production is about 60,000 tons. It shipped in the year 1940, 675 cars over the existing route via the Pennsylvania, with the back-haul to Hagerstown. It is entitled to have its case individually and fully considered and determined.

It is true the evidence introduced before the Commission by the carriers was uncontradicted to the effect that the prescribed new routes would substantially increase the number of participating carriers and the number of interchange services. For example, on traffic originating at points in Central Territory (including market points not served by the Pennsylvania), these routes would, generally speaking, substitute 4 or 5-line hauls for 2-line hauls via the Pennsylvania; and where the traffic did not originate on the New York Central or the Wabash, would, generally speaking, involve 5 or 6-line hauls.

Also, it was shown that the interchange expense incident to multiple-line hauls as compared with single-line hauls, is substantial. For example, via the direct route of the Pennsylvania from Chicago to Salisbury, there is no extra operating expense involved for inter-carrier interchange; whereas, under the prescribed new routes, the interchange expense is an important item, in one or more instances (depending upon the precise routing) aggregating nearly \$40.00 per assumed box car equipment of 33 tons of grain. It is upon these facts that the carriers rest their argument in [fol. 143] its last analysis, namely, that a carrier should be permitted to restrict origin and destination territory to points over such routes as will involve as few carriers as possible.

As respects comparative freight services costs, the Pennsylvania endeavored to prove by data presented to the Commission that these costs over the prescribed new routes would be much greater than over the existing routes. For example, on the same assumed box car equipment of 33 tons to Hagerstown and of 1.34 cars of out-bound products on the basis of 24.6 car tons after milling or mixing in transit, the freight service cost from Chicago to Salisbury, over the Pennsylvania's present route was shown to be \$184.10; whereas over the prescribed new routes 1 and 2, the cost was shown to be \$191.18 and \$232.08, respectively. However, we believe the Commission had the right to attach relatively limited value, as it did, to such cost studies, be-



cause based upon the Pennsylvania's average system costs and the average system costs of the other affected carriers, on all less-than-carload and carload freight, while in the present case, we are concerned with a heavy loading commodity, moving comparatively long distances, in well defined channels, which may well give rise to numerous different and controlling factors.

We believe it to be true, as the carriers contend, that, for the purposes of the precise issue now before us, little importance should be attached to the Commission's finding that in order to meet the demands of customers for prompt delivery, Stickell shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading, to Elsmere Junction (Delaware), thence by truck to destination points, because the comparison contemplated by clause (b) of Section 15 (4) must be as between the proposed routes and existing routes by *railroad*, and a comparison of a combination rail-motortruck service with all-rail service over either routes, is not contemplated. However, when [fol. 144] all of the other considerations which weigh most heavily in favor of the carriers and which we have just analyzed, have been given their full weight, we are completely satisfied that the Commission was justified in finding them, on the evidence presented, to be subordinate to the considerations which favor the shipper.

The carriers maintain that the result of permitting the Commission to prescribe the new through routes will be an arbitrary exercise of power by the Commission in violation of the due process provisions of the Fifth Amendment to the Constitution. However, no claim is made that the establishment of the prescribed new routes would, in fact, be confiscatory or that the carriers have a Constitutional right to have their long-hauls maintained. The long history of the legislation involving the carriers' rights in this respect and the clear assertion in the various decisions of the Supreme Court that the carriers have no such right, would seem sufficient to refute this contention. In short, unless the Commission has erred (1) in interpreting clause (b) of Section 15 (4); or (2) though correctly interpreting it, has, nevertheless, applied it in the present case in a manner not supported by substantial evidence, there can be no violation of the carriers' substantive rights.

It is claimed that the Commission's decision will establish a precedent which will have an injurious effect upon the rate structure and revenues of carriers generally,—that it will lead to demand for the general application of the same principle, thereby bringing about a complete change in the structure of through routes and joint rates on grain as effects Trunk Line Territory, with resulting cross-hauling and increased expense of operation. The Commission's answer is that even if such be true, "that would be no reason for denying complainant just and reasonable through routes at the established joint rates." (255 I. C. C. at 337.) We need not, and do not go that far, because this apprehension of the carriers is not supported by that degree of proof in [fol. 145] the present record necessary to determine the over-all effect of this individual case, and there is enough to indicate that there may well be reasons for differentiating the situation at some, if not at all of the other transit points referred to.

There is one final point made in support of the carriers' contention, but we feel that a mere statement of it is a sufficient refutation of its application to the present case. We refer to the claim made by the Pennsylvania that since the Commission's order rests in part upon a finding of breach of duty under Section 3 (4) of the Interstate Commerce Act (49 U. S. C. A. Sec. 3 (4)), requiring a carrier to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. \* \* \*," the carriers are entitled to a separate hearing before the Commission with respect to whether that particular provision of the law has been violated, and that the hearing which has been had was not an equivalent.

What the Commission said on this point is as follows (255 I. C. C. at 341): "It is the duty of carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of Section 3 (4) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating stand-

point for it to haul traffic 149 miles out of line." This is a correct interpretation of the law. Merely because the Commission has seen fit to relate the two parts of the Act to each other, is no justification for saying that the present case must be converted or extended into a hearing under [fol. 146] Section 3 (4). If, as a result of the new routes prescribed by the Commission becoming effective, new questions as to the sufficiency or equality of interchange facilities should arise, both the carriers and any shippers involved therein may seek an appropriate hearing before the Commission.

### Conclusions

We conclude, for the reasons set forth, that the Commission has (1) correctly interpreted clause (b) of Section 15 (4) of the Transportation Act of 1940; (2) has applied it in the present case in a manner supported by substantial evidence; and (3) that such application violates no Constitutional rights of the petitioning carriers. Therefore, the petition must be dismissed.

In view of the nature of this case, the Interstate Commerce Commission having made findings of fact, and this Court finding substantial evidence to support the same, it is assumed that no further or other statement of the ultimate or evidentiary facts is required under Rule 52 of the Federal Rules of Civil Procedure beyond those stated in the opinion; and also that the conclusions of law herein need not be separately stated.

William C. Coleman.

[fol. 147] IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND

PENNSYLVANIA RAILROAD COMPANY, et al., Petitioners,

v.

UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION, D. A. STICKELL & SONS,  
INC., Intervening Defendants

FINAL DECREE—Filed March 22, 1944

This cause having come on to be heard upon final hearing, upon the pleadings, proofs, arguments and briefs, of

petitioners and defendant and intervening defendants, before a duly constituted District Court of three judges pursuant to the provisions of law, and upon consideration thereof, and the Court being fully advised in the premises, it is hereby finally determined, ordered and decreed as follows:

1. The order of the Interstate Commerce Commission made on March 18, 1943, in Docket No. 28647, *D. A. Stickell & Sons, Inc. v. Alton Railroad Company et al.*, 255 I. C. C. 333, was within the statutory authority of the Commission and was made upon substantial evidence and in accordance with applicable law and is in all respects valid.

[fol. 148] 2. The relief prayed for in the complaint is hereby denied and the complaint is dismissed for want of equity at petitioners' costs.

Morris A. Soper, United States Circuit Judge; William C. Coleman, United States District Judge; W. Calvin Chesnut, United States District Judge.

Dated March 22, 1944.

[fol. 149] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION OF PETITIONERS FOR STAY PENDING APPEAL—  
Filed March 22, 1944

To the Honorable Morris A. Soper, Circuit Judge, William C. Coleman, District Judge, and W. Calvin Chesnut, District Judge:

Now come The Pennsylvania Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, A Corporation; Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustee-); Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company; Louisville and Nashville Railroad Company; G. W. Webster and Joseph Chapman, Trustees of Minneapolis,

St. Paul & Sault Ste. Marié Railway Company; Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, [fol. 150] Debtor; The New York Central Railroad Company; The Pittsburgh and Lake Erie Railroad Company; Southern Railway Company, and Wabash Railroad Company, petitioners in the above-entitled suit, and respectfully move the Court to enter an order herein, staying and suspending the order of the Interstate Commerce Commission dated March 18, 1943, as amended, in its Docket No. 28647, D. A. Stickell & Sons, Inc. v. The Alton Railroad Company et al., pending the perfecting and determination of an appeal to the Supreme Court of the United States from the Final Decree of this Court herein, when entered, and for reasons thereof respectfully present to the Court as follows:

1. The aforesaid order of the Interstate Commerce Commission of March 18, 1943 as amended requires the petitioners and each of them to establish on or before April 17, 1944, upon 15 days' notice, and thereafter to maintain and apply the rates specified therein over certain other routes therein prescribed which short-haul one or more of the petitioners without their consent.

2. On March 2, 1944, this Court filed an opinion announcing that the petition would be dismissed.

3. Petitioners, being advised that they have the right under the statutes to appeal to the Supreme Court of the United States from the final decree of this Court, when entered, dismissing their bill, purpose to exercise that right promptly after the decree of dismissal shall have been entered.

4. At the time of the filing of the opinion of this Court herein, the Commission's said order of March 18, 1943, as subsequently amended, required compliance therewith as aforesaid on or before April 17, 1944, by notice to the Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act. At the request of petitioners [fol. 151] the Commission has further amended its said order of March 18, 1943 so as to shorten the notice period to 15 days, prior to the effective date of April 17, 1944. Your petitioners are advised that it is not the practice of

the Interstate Commerce Commission, in cases where its orders are sought to be set aside but where its orders are sustained by the District Court, to postpone the effective date of its orders pending the perfecting and determination of an appeal to the Supreme Court of the United States from the final decree of the District Court and therefore aver that the Commission would not grant such a postponement of the effective date of its order of March 18, 1943 if requested by petitioners so to do.

5. This case presents the novel question as to the extent of the power of the Interstate Commerce Commission to prescribe through routes which shorthaul one or more railroads without their consent under the 1940 amendments to Section 15 (4) of the Interstate Commerce Act (49 U. S. C. A. 15 (4)). As stated by this Court in its opinion herein this provision "has not heretofore been construed in any reported court decision, \* \* \*." The point involved is of substantial importance to petitioners and to many other railroads in that upon its determination depends the scope and applicability of the limitation in Section 15 (4) on the Commission's authority to prescribe through routes under Section 15 (3) of the Interstate Commerce Act.

6. If petitioners, in compliance with the Commission's said order of March 18, 1943, as amended, were to comply therewith by establishment of the prescribed through routes, it might eventuate that the Supreme Court on appeal might hold the case moot. Petitioners are of the view that such compliance would not make the case moot, but it is possible that the matter might be determined otherwise [fol. 152] by the Supreme Court.

7. Although Section 15 (4) of the Interstate Commerce Act imposes limitations on the Commission's power to prescribe through routes found by it to be in the public interest, when such through routes would shorthaul a railroad without its consent, Section 15 (3) of the Act contains the following limitation on the right of railroads so short-hauled to eliminate such through routes when once established:

"If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto, or authorization by the Commission, is suspended by the Com-



mission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section."

If, therefore, the order of the Commission shall become effective and the through routes therein prescribed be established in compliance therewith, and if upon the appeal the Supreme Court of the United States finds that said order should be enjoined, petitioners might be unable to cancel or discontinue such through routes.

8. The present situation as respects the through routes available to the complainant before the Commission, which does not comprehend the through routes now prescribed, has long been in effect and has been regarded as lawful as attested by the decision of the Commission in *Stickell & Sons v. Western M. Ry. Co.*, 153 I. C. C. 759 (1929).

9. This Court has ample authority to grant the stay herein prayed.

*Hovey v. McDonald*, 109 U. S. 150, 161;  
*Cumberland Tel. Co. v. P. S. C.* 260 U. S. 212, 219;  
*Virginian Ry. v. U. S.* 272 U. S. 658, 668-672;  
*Beaumont, S. L. & W. Ry. v. U. S.* 282 U. S. 74, 90;  
*Merchants' Warehouse Co. 1. U. S.* 283 U. S. 501, 513;  
 Civil Procedure Rule 62 (c).

[fol. 153] 10. In order to avoid any question as to whether, if a stay of the Commission's order is granted pending perfection and disposition of appeal, a bond for damages would fully indemnify intervenor-defendant, D. A. Stickell & Sons, Inc., for its consequent inability to secure in the interim the benefit of the basis of freight rates which would apply to the involved destinations on the Pennsylvania Railroad over the prescribed routes, and in order to afford to said intervenor-defendant during such period the same basis of freight rates on its traffic to such destinations as it would secure under the Commission's said order of March 18, 1943, if not so stayed, petitioner The Pennsylvania Railroad Company, one of the applicants herein, will undertake, and to that end will seek appropriate authority from the Interstate Commerce Commission, to file with the Commission tariff

schedules providing for the waiver by it, effective April 17, 1944, for one year and for any additional time required for the disposition of the appeal, of its out-of-route or back-haul charge of 4.5¢ per 100 pounds on said traffic. This will afford the Stickell Company, and any other members of the shipping public who could avail themselves of the prescribed through routes, the same basis of freight rates pending disposition of appeal as if the Commission's order were not stayed.

Wherefore, in view of the foregoing considerations and of the importance and novel character of the questions presented, and in order fully to protect their right of appeal, petitioners herein respectfully pray that this Court enter its order herein staying and suspending the aforesaid order of the Interstate Commerce Commission pending the perfecting and determination of their appeal to the Supreme Court.

[fol. 154] And your petitioners will ever pray, etc.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Building, Baltimore 1, Md.; Joseph F. Eshelman, Broad Street Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners.

✓ Dated, Baltimore, Md., March 22nd, 1944.

[fol. 155] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed March 22, 1944

The petitioners in the above-entitled proceeding, having applied to this Court for an order staying and suspending the operation and enforcement of the order of the Interstate Commerce Commission made on March 18, 1943, as amended, in the proceeding entitled Docket No. 28647, *D. A. Stickell and Sons, Inc. v. The Alton Railroad Company et al.*, pending the perfecting and determination of the appeal by said petitioners from the final decree, when entered, of this Court dismissing petitioners' petition for an injunction

restraining the operation and enforcement of said order, as so amended, and the petitioners having undertaken to waive, effective April 17, 1944, and pending disposition of appeal, the back-haul charge of The Pennsylvania Railroad Company on the traffic that under the Commission's said order would secure rates over the prescribed through routes not subject to back-haul charge, and the Court having considered the arguments of counsel and being fully advised in the premises;

It Is Ordered and Decreed, That, the aforesaid order of the Interstate Commerce Commission, as amended, and the operation and enforcement thereof, be and the same hereby are stayed and suspended pending the perfection and determination of petitioners' appeal to the Supreme Court of the United States from the said final decree of this Court when entered.

It Is Further Ordered and Decreed, That the requisite security for damages and costs on appeal be fixed in the sum of five thousand dollars (\$5000.00).

This 22nd day of March, 1944.

Morris A. Soper, United States Circuit Judge; William C. Coleman, United States District Judge; W. Calvin Chesnut, United States District Judge.

[fols. 157-158] Bond on stay for \$5,000.00 approved and filed March 22, 1944 omitted in printing.

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[fol. 159] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed May 15, 1944

The Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, a Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and

Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, [fol. 160] Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company, Petitioners in the above-entitled case, feeling themselves aggrieved by the final decree of the District Court of the United States for the District of Maryland, entered in said Court on March 22, 1944, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said petitioners pray that a transcript of the record, proceedings, and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated May 15, 1944.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners. H. C. Barron, Charles Clark, A. B. Enoch, P. F. Fault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor, of Counsel.

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[fol. 161] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 15, 1944

In the above-entitled cause, The Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, as Trustee of the Property of The Chicago and North Western Railway Company, a Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and

Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Rail- [fol. 162] way Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company, Petitioners, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on March 22, 1944, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

Ordered and Decreed that the appeal be, and the same is hereby allowed as prayed for.

Dated May 15, 1944.

William C. Coleman, United States District Judge.

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[fols. 163-167] Citation in usual form showing service on Wendell Berge, et al. omitted in printing.

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[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed May 15, 1944

To the Attorney General for the State of Maryland:

You are hereby notified that the District Court of the United States for the District of Maryland, on May 15, 1944, filed and entered an order allowing an appeal by the Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, a Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago,

[fol. 169] Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees of Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, Wabash Railroad Company, Petitioners, to the Supreme Court of the United States from a final decree filed and entered on the 22nd day of March, 1944, in the above-entitled cause, and that the citation signed by such Court on May 15, 1944, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, petitioners' jurisdictional statement pursuant to Rule 12 of the Revised Rules of the Supreme Court of the United States, and the statement required to be served on appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28, Sec. 47a, enacted March 3, 1911, c. 231, sec. 210, 36 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

Dated May 15, 1944.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners; H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor, Of Counsel.

[fol. 170] Received a copy of the foregoing notice this 15th day of May, 1944.

William C. Walsh. Per Elsa J. Clarke. For the Attorney General of the State of Maryland.



[Title omitted]

## ASSIGNMENT OF ERRORS—Filed May 15, 1944

Now come The Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Charles M. Thomson, As Trustee of the Property of The Chicago and North Western Railway Company, A Corporation, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, Louisville and Nashville Railroad Company, G. W. Webster and Joseph Chapman, Trustees of Minneapolis, [fol. 172] St. Paul & Sault Ste. Marie Railway Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, The New York Central Railroad Company, The Pittsburgh and Lake Erie Railroad Company, Southern Railway Company, and Wabash Railroad Company, petitioners in the above-entitled cause, by their counsel and, in connection with their appeal, file the following Assignments of Error upon which they will rely on the prosecution of their appeal to the Supreme Court of the United States from the final decree of this Court entered March 22, 1944.

The District Court erred:

(1) In not setting aside, annulling, and enjoining the Commission's Order of March 18, 1943, involved in this case.

(2) In concluding and holding that the Commission correctly interpreted clause (b) of Section 15 (4) of the Interstate Commerce Act as amended; that the Commission applied said clause (b) in the present case in a manner supported by substantial evidence; and that such application violates no Constitutional rights of the petitioning carriers.

(3) In concluding, holding and decreeing that the said order of the Commission was within its statutory authority and was made upon substantial evidence and in accordance with applicable law, and is in all respects valid.

(4) In dismissing the petition.

(5) In failing to conclude and hold that the said order of March 18, 1943, is beyond the statutory power of the Commission in that, in violation of the provisions of Section 15 (4) of the Interstate Commerce Act, the Commission therein and thereby has required and does require one or more defendant railroads, including one or more of petitioners herein, without their consent, to participate in the prescribed new through routes, which embrace substantially less than the entire length of their several railroads and of any intermediate railroad operated in conjunction and [fol. 173] under a common management or control therewith, which lie between the termini of such through routes, and thereby to short-haul themselves, without having made a precedent and valid finding that the through routes prescribed are "needed in order to provide adequate, and more efficient or more economic transportation."

(6) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that the Commission's ultimate finding upon which it rests, while in the language of the statute is without support in and is contrary to the evidence and is not supported by necessary quasi-jurisdictional findings.

(7) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that in making it the Commission did not observe the essentials of a fair hearing and the requirements of due process, but disregarded defendants' uncontroverted evidence which was competent, relevant, and material to the issues before it, and made findings not supported by the evidence, but contrary to the evidence, all in violation of the Fifth Amendment to the Constitution of the United States.

(8) In failing to conclude and hold that the Commission's order is based on a mistake of law in that it is predicated on the erroneous conclusion that under clause (b) of Section 15 (4) of the Act the Commission can require through routes which short-haul one or more railroads without their consent where the existing routes provide adequate transportation and where the proposed routes cannot be operated more efficiently or more economically than existing routes.

(9) In failing to conclude and hold that clause (b) of Section 15 (4) of the Act relates to the service of transportation and not to the rates or charges therefor.

[fol. 174] (10) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that it is predicated upon the erroneous conclusion that there was a burden of proof upon the railroads to show that the routes proposed would be less efficient or less economic than existing routes.

(11) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that it rests upon the Commission's erroneous conclusion that clause (b) of Section 15 (4) of the Act contemplates a comparison of the adequacy of existing and proposed through routes.

(12) In failing to find that the Commission found that existing through routes were adequate and provide adequate transportation, and in failing to conclude and hold that, as a consequence, the Commission was not empowered to prescribe the new through routes which it has ordered, and which short-haul one or more railroads petitioners herein without their consent.

(13) In concluding and holding that the Commission did not find the existing through routes to be adequate.

(14) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that it rests upon a finding that the prescribed new through routes "are needed to provide adequate and more efficient and adequate and more economical transportation", although the uncontradicted evidence of record shows that the existing through routes provide adequate transportation and that the routes prescribed are less efficient and less economic of operation than the existing routes.

(15) In concluding and holding that the Commission's order is not in excess of its statutory authority, in that the Commission is not empowered to prescribe through routes to pass through a particular intermediate point for the sole purpose of enabling a transit operator thereat to perform [fol. 175] transit services under the joint rate from origin to destination.

(16) In failing to conclude and hold that the Commission's order is based upon a mistake of law and is beyond its statutory power in that the Commission has therein and thereby required one or more railroads petitioners herein, without their consent, to participate in new through routes which short-haul them, without having found, as a prerequisite, that the existing through routes do not provide adequate transportation between the termini thereof, and that the service of transportation between the termini can be performed more efficiently or more economically over the prescribed routes than over the existing routes.

(17) In failing to find that the Commission failed to make any finding as to the relative efficiency or economy of the proposed and existing routes from the standpoint of the railroads performing the transportation between the termini of the through routes.

(18) In concluding and holding, after having assumed "the correctness of the carriers' evidence that via the prescribed new routes the total elapsed time for shipments to move from origin to destination points would, generally speaking, be longer than over the existing routes", that the Commission properly disregarded such evidence on the ground that the only significant comparison as to efficiency under clause (b) in this case is of the routes from the intermediate transit point of Hagerstown to the destinations involved.

(19) In failing to conclude and hold that the Commission's findings comparing the existing routes via the Western Maryland through Hagerstown to other eastern destinations with the prescribed routes via Hagerstown to the destinations involved are without support in the record, and that such comparisons are not relevant to issues arising under clause (b) of Section 15 (4) of the Act.

[fol. 176] (20) In concluding and holding that the record supports the Commission's Findings of Fact as to the relative efficiency and economy of the prescribed and existing routes.

(21) In failing to conclude and hold that the Commission's findings with respect to the relative efficiency and economy of the prescribed and existing routes are not supported by the evidence.

(22) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that the ultimate finding of greater efficiency and greater economy on which it rests is without support in the evidence and is directly contrary to the evidence which shows that to typical destinations the service over the prescribed routes would be slower, and transportation thereover less economic, than over the existing routes.

(23) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that in prescribing the through routes via Fulton Junction the Commission, acting without support in the evidence and contrary to the evidence, found that the evidence does not show that the operating conditions at Fulton Junction are any more difficult than at Hagerstown.

(24) In concluding and holding that the Commission properly disregarded the railroads' evidence as to relative costs of transportation service over the proposed and existing routes and in failing to conclude that the Commission's stated reasons for disregarding such cost evidence were not supported by and were contrary to the record.

(25) In failing to find that the Commission's order is not supported by any finding that the proposed through routes are more economic of operation than the existing through routes.

[fol. 177] (26) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that the Commission misinterpreted clause (b) of Section 15(4) of the Act as meaning "adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint."

(27) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that the ultimate finding on which it rests—that the prescribed through routes "are needed to provide adequate and more efficient and adequate and more economical transportation"—is predicated upon the erroneous assumption that clause (b) of Section 15 (4) of the Interstate Commerce Act empowers the Commission to require railroads petitioners herein, without their consent, to participate in new through routes which short-haul them, upon a mere showing that

such routes will be more advantageous or will result in a lower rate to a transit operator situated between the termini of the through routes and without regard to whether such through routes will be more efficient or more economic of operation than existing through routes.

(28) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that it rests upon the Commission's erroneous conclusion that clause (b) is operative to remove the short-hauling restriction of Section 15 (4) of the Act upon a mere finding by the Commission that the proposed through routes would be advantageous, and produce a lower rate or charge, to a shipper or a transit operator at an intermediate point thereon and without any finding that the proposed routes would be more efficient or more economic from a railroad standpoint.

(29) In concluding and holding that under clause (b) of Section 15 (4) of the Act the Commission is authorized to prescribe new through routes which short-haul a participating railroad without its consent where existing routes furnish adequate transportation but where the new route would be better or cheaper for a transit operator at an [fol. 178] intermediate point on such new route.

(30) In concluding and holding that the Commission considered the relative efficiency and economy of the prescribed and existing routes from the standpoint of the railroads as well as from the standpoint of the shipper, the transit operator at Hagerstown, and found the considerations in favor of the railroads to be subordinate to the considerations which favor the shipper.

(31) In failing to conclude and hold that the Commission's order is based upon a mistake of law and is beyond its statutory power in that the Commission has therein and thereby required one or more railroad petitioners herein, without their consent, to participate in new through routes which short-haul them, upon a mere finding that the prescribed through routes will be more efficient and more economic from the standpoint of a shipper, and without having found, as a prerequisite, that such through routes are needed in order to provide more efficient or more economic transportation from the standpoint of railroad operation.



(32) In failing to conclude and hold that, even if the Commission correctly interpreted clause (b) of Section 15 (4) of the Act, its order is arbitrary and without warrant in law in that it is not supported by evidence and findings that the proposed routes would be more efficient or more economic than existing routes from "the participating carriers' standpoint."

(33) In that, having interpreted clause (b) of Section 15(4) of the Act "to mean 'adequate, and more efficient or more economic transportation' from the shipper's as well as from the carrier's standpoint," and as including "also considerations of railroad operating efficiency and economy," it failed to conclude and hold that the Commission's order was arbitrary and without warrant in law by reason of the Commission's failure to make findings as to whether the through routes prescribed would be more efficient or more economic from a railroad operating standpoint.

[fol. 179] (34) In concluding and holding that clause (b) of Section 15(4) of the Act "must be interpreted to mean 'adequate, and more efficient or more economic transportation' from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier."

(35) In failing to conclude and hold that the Commission's order is based upon a mistake of law and is arbitrary in that its finding that the prescribed routes are needed to provide more efficient transportation is based upon a comparison of the existing all-rail through routes with a rail-truck route through Elsmere Junction, Del., and not with the through routes prescribed.

(36) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it is predicated upon ultimate findings as to adequacy, efficiency, and economy of through routes which rest not upon the evidence but upon an erroneous finding, itself without evidence, that The Pennsylvania Railroad Company, one of the defendants and a petitioner herein, failed to perform its duty under Section 3(4) of the Interstate Commerce Act

to afford all reasonable, proper, and equal facilities for the interchange of traffic with the Western Maryland Railway, although no issue under that section was presented or tried, and no notice was given of any such issue to be heard or determined.

(37) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that in making the findings upon which it rests the Commission erroneously assumed that, in determining the relative efficiency and economy of proposed and existing routes, it might disregard evidence that the proposed routes involved [fol. 180] the use of interchange points not consistent with efficient and economic operation on the ground that any such inefficient or uneconomic operation would constitute a failure on the part of the railroads involved to perform their duty under Section 3(4) of the Act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines.

(38) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that it is based on the failure of the Commission to make findings on the uncontroverted evidence that the proposed routes via York and Fulton Junction would be less efficient and less economic of operation, by reason of the Commission's erroneous conclusion that it was entitled to disregard such evidence and to fail to make findings thereon because of the duty of railroads under Section 3(4) of the Act to afford all reasonable, proper, and equal facilities for the interchange of traffic with connecting carriers, although no issue under that section was presented or tried, or evidence adduced with respect thereto, and no notice was given of any such issue to be heard or determined.

(39) In failing to conclude and hold that the necessity under clause (b) for findings by the Commission as to the relative efficiency and economy of the proposed and existing routes from the standpoint of the railroads performing the transportation is not obviated by a finding of a violation of Section 3(4) of the Act where no issue was presented thereunder or hearing had or evidence presented with respect thereto.

(40) In concluding and holding that the Commission properly found a breach of duty under Section 3(4) of the

Interstate Commerce Act, and in failing to find that no issue was presented, or hearing had, or evidence adduced with respect thereto.

[fols. 181-228] Wherefore, petitioners pray that the said decree be reversed and that the Commission's said order be set aside, annulled, and enjoined.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md.; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa. H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northcutt, L. H. Strasser, Carson L. Taylor.

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[fol. 229] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE OF PETITIONERS-APPELLANTS FOR TRANSCRIPT OF  
RECORD—Filed May 15, 1944

To the Clerk of the Above Named Court:

You are hereby requested to prepare a transcript of the record in the above-entitled cause to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, and to include in such transcript of record the following, to wit:

(1) Petition and Exhibits A, B, C, and D thereto, filed November 4, 1943;

(2) Intervention of Interstate Commerce Commission filed, December 17, 1943;

(3) Answer of Interstate Commerce Commission filed, December 17, 1943;

(4) Order of Court requiring respondent to show cause on 26 January 1944 at 10:00 A. M. why the application for an interlocutory injunction should not issue, filed December 27, 1943;

(5) Order of Court convening 3-Judge Statutory Court, filed December 27, 1943;

(6) Motion of D. A. Stickell & Sons, Inc., to intervene and Order of Court granting same, filed December 31, 1943; [fol. 230] (7) Answer of the United States of America, filed December 31, 1943;

(8) Answer of intervener, D. A. Stickell & Sons, Inc., filed January 7, 1944;

(9) Pages 1 to 11, inclusive, of the transcript of the Stenographers' notes of the hearing before the 3-Judge District Court at Baltimore, Md., on January 6, 1944, except that portion of the Argument which appears on the latter half of page 11 thereof;

(10) Certificate of Secretary of Interstate Commerce Commission dated November 2, 1943 (three pages), and documents and papers referred to in, and covered by, said certificate;

(11) Certificate of Secretary of Interstate Commerce Commission, dated November 2, 1943 (one page), and transcript of hearing before the said Commission and exhibits filed at said hearing referred to in, and covered by, said certificate;

(12) Certificate of Secretary of Interstate Commerce Commission, dated January 7, 1944, and Order of said Commission, Commissioner Porter, dated November 6, 1943, referred to in, and covered by, said certificate;

(13) Opinion of Court, filed March 2, 1944;

(14) Final decree dismissing the Complaint for want of equity at petitioners' costs, filed March 22, 1944;

(15) Application of petitioners for stay pending appeal, filed March 22, 1944;

(16) Order of Court that the Order of the Interstate Commerce Commission, as amended, and the operation and enforcement thereof, be stayed and suspended, pending the perfection of petitioners' appeal and fixing security for damages and costs on appeal in the sum of \$5,000.00, filed March 22, 1944;

[fol. 231] (17) Bond staying Order of Interstate Commerce Commission pending appeal, filed March 22, 1944;

(18) Petition for appeal;

(19) Order allowing appeal;

(20) Citation on appeal;

(21) Notice of appeal;

(22) Notice to Attorney General of State of Maryland and acknowledgment of service.

(23) Assignment of Errors;

(24) Jurisdictional statement by petitioners under Rule 12 of the revised rules of the Supreme Court of the United States;

(25) Statement by petitioners-appellants directing attention to Paragraph 3 of Rule 12 of the revised rules of the Supreme Court of the United States.

(26) Praecept of petitioners-appellants for transcript of record.

(27) Order of Judge Coleman, dated May 15, 1944, directing the Clerk to transmit original record to the Supreme Court of the United States.

(28) Cost bond on appeal.

(29) All docket entries in their appropriate order.

(30) All proofs of service.

Wm. Pepper Constable, 1000 Maryland Trust Building, Baltimore 2, Md; Francis R. Cross, Baltimore & Ohio Bldg., Baltimore, Md.; Joseph F. Eshelman, Broad St. Station Bldg., Philadelphia 4, Pa., Attorneys for Petitioners.

H. C. Barron, Charles Clark, A. B. Enoch, P. F. Gault, Thomas P. Healy, H. H. Larimore, A. H. Lossow, W. A. Northeutt, L. H. Strasser, Carson L. Taylor, of Counsel.

[fol. 232] Service of the foregoing praecipe for transcript of record and receipt of copy thereof are hereby acknowledged this 15th day of May, 1944.

Wendell Berge, Assistant Attorney General; Robert L. Pierce, Special Assistant to the Attorney General; Bernard J. Flynn, United States Attorney (for the United States of America); Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel (for the Interstate Commerce Commission), — — — Attorneys for Intervener D. A. Stickell & Sons, Inc.

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[fol. 233] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS TO EXHIBITS—Filed May 15, 1944

In accordance with the provisions of the praecipe of petitioners-appellants for transcript of record on appeal

of the above entitled matter to the Supreme Court of the United States, and good cause appearing therefor,

*It is hereby ordered*, that the documents and papers covered by the three certificates of the Secretary of the Interstate Commerce Commission, and transmitted with said certificates in Docket No. 28647, *D. A. Stickell & Sons, Inc. v. The Alton Railroad Company, et al.*, all of which documents and papers were received in evidence in this Court in the trial of this cause, may all be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on appeal herein.

Dated this 15th day of May, 1944.

William C. Coleman, United States District Judge.

[fol. 234] Service of a copy of the above Order As To Exhibits and receipt of a copy thereof is hereby acknowledged this 15th day of May, 1944.

Wendell Berge, Assistant Attorney General; Robert L. Pierce, Special Assistant to the Attorney General; Bernard J. Flynn, United States Attorney (for the United States of America); Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel (for the Interstate Commerce Commission), — — — Attorneys for Intervener D. A. Stickell & Sons, Inc.

[fols. 235-237] Cost Bond on Appeal for \$250.00 approved and filed May 15, 1944 omitted in printing.

[fol. 238] Clerk's Certificates to transcript omitted in printing.

[fol. 239] EXHIBIT IN EVIDENCE

• • • • •

[fols. 240-242] Secretary's Certificate to following transcript omitted in printing.



[fols. 243-250] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28647

D. A. STICKELL & SONS, INC., Complainant,

vs.

THE ALTON RAILROAD COMPANY, ETC., Defendants

COMPLAINT—Filed April 19, 1941 Omitted. Printed side page, 34 ante

[fols. 251-278a] INTERSTATE COMMERCE COMMISSION

Washington

No. 28647

D. A. STICKELL & SONS, INC.

vs.

THE ALTON RAILROAD COMPANY, ET AL

ORDER—April 17, 1941

Herewith is a copy of a complaint filed with the Interstate Commerce Commission in the above-entitled case.

Defendants are hereby called upon to satisfy the complaint or to answer the same in writing within twenty days from this date.

By the Commission:

\_\_\_\_\_  
W. P. Bartel, Secretary.

[fol. 279] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket 28647

[Title omitted]

PETITION OF ALLIED MILLS, INC. FOR LEAVE TO INTERVENE—  
Received at Hearing Sept. 10, 1941

[fol. 280] Comes Now your petitioner, Allied Mills, Inc. and respectfully represents that they have an interest in the above entitled proceedings and desire to intervene in and

become a party to said proceedings, and as grounds for the proposed intervention say:

I. That the Allied Mills, Inc., is a corporation existing under the laws of the State of Indiana with principal offices in the City of Fort Wayne, Indiana and whose principal business is the buying of raw materials, consisting mainly of grain and grain products, the manufacture and distribution of mixed livestock feed for animals and poultry, and the shipping of same in interstate and intrastate commerce.

II. That the complainant in the above entitled proceedings brings into issue under an allegation of unreasonableness and "other provisions" of the Act, the rates and charges for the transportation of grain and grain products from points in Western Trunk Line and Central Freight Association territories, milled and mixed into products at Hagerstown under in-transit arrangements, and destined to points in Trunk Line and New England territories; and specifically seeks the establishment of through routes and joint rates via Hagerstown to destinations on the Pennsylvania Railroad without payment of a back-haul charge.

[fol. 281] III. That your petitioner operates mixed feed manufacturing plants at Buffalo, New York and Portsmouth, Virginia for the purpose of supplying its customers in the destination territory indicated in this complaint.

IV. That the rates, routes and all transportation conditions surrounding the movement of grain and its products, including mixed livestock feed for animals and poultry, from and to the origins involved in this complaint are matters of grave importance to your petitioner.

Wherefore, said Allied Mills, Inc., prays leave to intervene in the above entitled proceedings and to be treated as a party hereto.

Respectfully submitted, Allied Mills, Inc., by (Signed)  
R. V. Craig, Practitioner.

Dated at Chicago, Illinois, July 29, 1941.

[fols. 282-283] *Duly sworn to by John B. DeHaven. Jurat omitted in printing.*

[fols. 284-295]

[Title omitted]

REPORT OF THE COMMISSION—March 18, 1943. Omitted.  
Printed side page 42 ante

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[fols. 296-301] CORRECTED ORDER—March 18, 1943 Omitted.  
Printed side pages 61 ante

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[fol. 302] BEFORE THE INTERSTATE COMMERCE COMMISSION  
No. 28647

[Title omitted]

PETITION OF DEFENDANTS \* FOR REARGUMENT AND RECON-  
SIDERATION AND FOR POSTPONEMENT OF THE EFFECTIVE DATE  
OF THE ORDER—Filed May 24, 1943

Comes now defendants \* and respectfully petition the Commission for reargument and reconsideration of the report and order made and entered in this proceeding by [fol. 303] the Commission, Division 2, on March 18, 1943, and for the stay or postponement of said order pending disposition of the matter by the Commission pursuant to the provisions of Section 17(8) of the Act, and in support thereof respectfully represent as follows:

I. The Commission Should Grant Reargument and Recon-  
sideration

A. The Case Is One of Substantial Importance

1. Affirmance of the decision might establish a precedent disruptive of the existing structure of rates and routes with resulting depletion of carrier revenues.

All defendants on whose behalf this petition is submitted are seriously concerned by the implications of the decision

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\* The Western Maryland Railway Company did not appear in the case and neither supports or opposes the complaint. The term "defendants," except as otherwise indicated, will refer to defendants other than the Western Maryland Railway Company.

of Division 2 in this case. There can be no doubt but that, if its decision should stand and have the approval of the Commission, the carriers throughout the East would be besieged with demands, and the Commission with complaints, for the establishment of whatever new through routes might be necessary to pass through transit points, now subject to back-haul or out-of-line charges, so as to enable them to avoid such charges.

[fol. 304] The grain rates, and particularly the reshipping rates from the rate-break points, are on a depressed basis, and the routes via which transit is now available have been determined upon with a view to the more economical methods of operation and the preservation of carrier revenues from depletion due to unnecessary expense for multiple interchanges which would be attendant upon the operation of multiple-line routes.

The report of the Division brusquely puts aside any consideration of the injurious effect upon the rate structure and carrier revenues of the establishment of the precedent which its decision would seem to represent. Presumably this was due to what it regarded as the background of the proceeding. Thus, in an earlier proceeding brought by this same complainant, *Stickell & Sons v. W. M. Ry. Co.*, 146 I. C. C. 609 (1928), the Commission, Division 4, found routes similar to those here required desirable in the public interest. The report of the Commission on further hearing in that case, *Stickell & Sons v. W. M. Ry. Co.*, 153 I. C. C. 759, while holding that it was without power to require the establishment of additional through routes via Hagerstown which would short-haul certain defendants as delivering carriers, did not confirm the Division's finding of necessity and desirability in the public interest.

These defendants are of the impression that the Division's decision proceeds on the erroneous assumption that the facts of that case, herein termed the first *Stickell case*, are parallel to those here of record, and that in view of the amendment of Section 15(4) of the Act, the Commission should follow its earlier finding with respect to the necessity and desirability of such additional routes.

The record and findings of fact in the first *Stickell case* are not of record here. If one may judge from the facts set forth in those decisions, the present record is substantially different, in that it contains a full and thorough exposition

and explanation of the entire structure of routes and rates under present conditions, and is of more extended scope than the evidence in the earlier case. But further than this, the present record contains significant evidence of relative costs of service over existing and proposed routes for which there was no counterpart in the earlier record, and which is of especial significance in view of the present state of the law.

If affirmance of the precedent of the Division's decision herein would logically lead to a disruption of the existing structure of rates and routes on the traffic involved in Eastern territory, then the Commission ought not to affirm the decision without a clear understanding of its consequences and without intending those results.

[fol. 306] 2. The case is one of initial impression as regards the interpretation of amended Section 15(4).

The interpretation which the Division's report gives to amended Section 15(4) would emasculate the limitation set forth in clause (b) thereof. As will hereinafter be set forth more at length, the reference to more efficient or more economic transportation, contained in that clause, related to efficiency and economy of *operation*. Yet the report of the Division would make this limitation of no effect if, despite no showing of greater efficiency and economy of operation, the proposed routes were shown to be more advantageous or economical from the standpoint of the charges to the *shipper*.

If the Division is correct in this interpretation, then it would seem to follow inevitably that any transit operator now subject to a back-haul or out-of-line charge could secure the establishment of through routes via his station which would not entail a back-haul, and thereby override the carrier's non-consent to be short-hauled, by showing that this would be to his financial advantage. In such cases the limitation which the carriers thought they were obtaining and which the Congress thought it was providing, would have vanished into thin air.

[fol. 307] Since the point of law here presented has never been decided, and since the interpretation to be placed on the amended provision is of importance to rail carriers generally, the case is one which should have the consideration of the entire Commission.

3. Because of the importance of the case the Commission's findings ought to be made to conform to the record.

Aside from its erroneous interpretation of amended Section 15(4), the findings in the decision of Division 2 in numerous respects lack support in the record or are contrary to the record. With but slight changes the report of the Division is the proposed report of the Examiner. Because the proposed report failed to contain findings responsive to the facts of record and, contrariwise, included findings unsupported by the record, these defendants took numerous exceptions thereto. Since the report of the Division appears largely to have ignored these exceptions, and since defendants believe that an examination of the record will and should require a more or less complete revision of the fact findings in such report, these defendants ask the Commission to make the appropriate corrections. As of possible convenience in connection therewith, the defendants in the following pages have drawn freely [fol. 308] from the material in such exceptions, dealing with such matters of fact in the order of their treatment in the report rather than according to a topical arrangement.

#### B. The Report of the Division Is Not Supported by the Record, But Is Contrary to the Record

1. The report is in error as not stating the position of defendants herein.

The report of the Division fails to make clear the position of the defendant carriers with respect to the routes sought by complainant. A reading of the report would indicate that only the Baltimore & Ohio and the Pennsylvania are opposing the establishment of the through routes sought. This is incorrect. All carriers here defendant, except the Western Maryland, oppose the prescription of the routes sought, and the report should have so found. Thus, all carriers defendant other than the Western Maryland made common cause in opposing the complaint herein and appeared by a committee of counsel in opposition to the complaint (3).<sup>\*</sup> The testimony and exhibits dealing particularly with the situation from the standpoint of the ori-

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<sup>\*</sup> Except where preceded by "Ex." to designate an exhibit, figures in parentheses, except as otherwise indicated, refer to pages of the transcript of record.



gin territory, both Central territory and west thereof, [fol. 309] was introduced through Witness Heimert, Chairman of the Defense Committee of the Central Freight Association defendant lines (72 ff). The testimony and exhibits of witnesses Beggs, Thornton, and Clark were likewise presented in support of the case of all defendants except the Western Maryland. The latter did not appear at the hearing or on brief and neither supports nor opposes the complaint.

These defendants ask that in lieu of the last sentence of the third paragraph on Sheet 1 of the mimeographed report the following finding be substituted:

"All carriers named in the complaint as defendants, except the Western Maryland Railway Company, appeared by a committee of counsel and united in opposing the prescription of the routes sought. To sustain their defense these carriers, herein for convenience termed 'defendants,' called as witnesses traffic officers of the Central Freight Association and the Baltimore & Ohio and Pennsylvania railroads, and an operating officer of the latter railroad."

2. The findings are inaccurate as to the weight of complainant's shipments.

In the first paragraph at Sheet 2 of the mimeographed report the following statements appear:

[fol. 310] "Complainant estimates the average loading of its inbound shipments at 72,000 to 80,000 pounds and of its outbound shipments as 46,000 pounds. The Pennsylvania shows that 217 inbound cars handled by it during May, June, and July 1940 averaged 66,044 pounds and that 383 outbound cars handled by it during the period from December 1940 to May 1941 averaged 49,000 pounds."

The foregoing findings contain two inaccuracies. The figure 72,000 pounds should be 76,000 pounds, and the figure 49,000 pounds should be 49,200 pounds (40, 41, 116, 155, 156).

3. The report erroneously fails to find that the Pennsylvania established transit at complainant's request.

The report is in error in that it fails to include in connection with the third complete paragraph on Sheet 3, preferably at the end thereof, a finding substantially as follows:

"The Pennsylvania established the transit arrangement at Hagerstown at the request and for the use of complainant, and its absorption of the Western Maryland switching charge was undertaken voluntarily, although the Commission previously, in *Stickell & Sons v. Pennsylvania R. Co.*, 151 I. C. C. 364 and 156 I. C. C. 373, had found its earlier failure to absorb such [fol. 311] switching charges on transit shipments at Hagerstown not unreasonable or unduly prejudicial."

In support of the proposed finding see Record page 119 and Exhibit 45, page 2.

4. The report is incomplete and inadequate in its failure to find that the avoidance of the back-haul charge is the real objective of the complaint.

The last paragraph at Sheet 3 of the mimeographed report begins with the following statement:

"Complainant does not assail the reasonableness of the through rates, the out-of-line charge, or the transit charge."

While the statement is correct in its reference to the through routes and the transit charge, some further reference to the out-of-line charge is necessary to reflect the record, to prevent a misapprehension, and to convey a correct idea as to the essential nature of the controversy. The fact is that if it were not for the existence of the out-of-line charge, which applies when traffic is handled over the Pennsylvania's route through Enola, the present case would not arise. Had it been deemed practicable to eliminate the back-haul charge there would not be any complaint of the alleged inadequacy of the Pennsylvania's route to [fol. 312] or from Hagerstown. That this is a correct conclusion is confirmed by an admission of counsel for complainant in response to a question of the Examiner in the course of a colloquy at page 97, as follows:

"Exam. Berry:—No. What he is asking is—what he is asking is a through route to make it directly intermediate.

“Mr. Eshelman:—I won’t argue with you. I think it comes to the same thing.

“Exam. Berry:—So as to wipe out the back-haul charge. Isn’t that what you are asking for?

“Mr. Hillyer:—That is it.”

The above-quoted finding should therefore be amended in substance as follows:

“Complainant does not assail the reasonableness of the through rates or the transit charge or of the out-of-line charge as such, but the record supports the conclusion that if the out-of-line charge were eliminated the essential basis for the complaint would be removed.”

5. The report fails to reflect the record concerning the situation of complainant in relation to that of other transit operators in the same territory.

The second complete paragraph of Sheet 4 of the report [fol. 313] begins with the statement that “The Baltimore & Ohio and Pennsylvania contend” that complainant is at no substantial disadvantage, etc. Aside from the fact that the reference should not be to the Baltimore & Ohio and Pennsylvania, but to *all* defendants other than the Western Maryland, the findings contained in the paragraph err in that they fail to reflect the facts shown of record, and summarized at pages 15-26 of Defendants’ Brief, to the effect that complainant is in no different situation with respect to rates and routes than millers generally in Trunk Line territory, and is at no disadvantage as compared with such transit operators. These defendants ask that in connection with this paragraph the Commission make a finding substantially as follows:

“Complainant has available to it a comprehensive line of routes which enable it to draw grain and grain products from western trunk line territory and from practically all of central territory for transit at Hagerstown and for shipment beyond to an extensive destination territory in the East, including New England, without out-of-route charges. In addition, it has available, subject to small back-haul charges, a considerable additional destination territory. Complainant’s

situation with respect to the applicability of back-haul charges in reaching certain destinations in trunk line [fol. 314] territory is not different in principle from that which obtains generally with respect to other transit operators in trunk line territory. In practice, however, complainant has numerous advantages over many other such transit operators in trunk line territory in that it can reach at a small back-haul charge a considerable destination territory to which they would be subject to higher back-haul charges or to a combination of rates. There is no allegation or showing of undue prejudice."

6. The report errs in its conclusions with respect to the extent that the public interest demands equalization of rates.

In the third complete paragraph at Sheet 4 of the report, the following statement appears:

"The public interest demands that all shippers be accorded relatively equal opportunities to reach all reasonably available markets."

But the report is incomplete and unresponsive to the facts of record in that it fails to state the limitations which are here necessary to be observed. Thus, the carriers are not obligated to accord equal rates to all shippers regardless of their relative locations and regardless of the relative services to be performed in serving them. This point is expressed in the well-founded principle that carriers are [fol. 315] not bound to relieve a shipper from its unfavorable location by an adjustment of transportation charges.\* These defendants ask that for the above-quoted sentence there be substituted the following:

"The public interest demands that all shippers similarly situated be accorded relatively equal opportunities to reach all reasonably available markets, but it would be contrary to the public interest to adopt a policy of requiring the establishment of additional through routes which would entail a greater physical

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\* See for example *Quimby v. Maine Central R. R. Co.*, 13 I. C. C. 246, 248; *Flory Milling Co. v. C. N. E. Ry. Co.*, 93 I. C. C. 129, 134

service, by reason of increased multiple-hauls, with consequent increased expense of operation, merely for the purpose of affording transit operators in the territory between the origin and destination the intermediate application of joint rates over such through routes."

7. The report is contrary to the record in finding that complainant is at a disadvantage as compared with feed manufacturers at other points.

In the latter part of the third complete paragraph at Sheet 4 of the report there are findings to the effect that complainant is at a disadvantage as compared with other [fol. 316] feed manufacturers, chiefly at more western points, in reaching the destinations to which through routes are here sought. The report fails, however, to compare complainant's situation with that of millers generally, and fails to recognize the differences in the situation at Hagerstown and the compared points. The principal rate-break points and Buffalo, Fort Wayne, Indianapolis, Cincinnati, Toledo, Cleveland, Akron, and Pittsburgh are all served by direct lines of the Pennsylvania to the East, and it is therefore entirely appropriate that feed manufacturers at such points should be able to reach eastern destinations on the Pennsylvania at the through rates. But the fact that the destination territory in which complainant can market its products at the flat rates is not equally wide does not connote prejudice to it. The fact is that transit operators in or near the origin territory have a more restricted source of supply, but a wider destination territory, while transit operators in or near the points of destination have a wider source from which to obtain their inbound materials and a somewhat less extensive territory within which to market their products. This is a natural consequence of the difference in location. Feed manufacturers at eastern points, such as complainant, have an advantage over their more western competitors in that they are able on shorter notice [fol. 317] to make deliveries of their mixed feed at eastern points of consumption (18).

The superficial character of the comparison and unsound nature of the conclusion based thereon further appear from the fact that transit operators at such more western points are at no advantage as compared with Hagerstown in milling grain originating at intermediate points, but

on the contrary are at a disadvantage. This is shown by Exhibit 54 wherein comparison is made of the rates on grain originating at such Ohio points as Cleveland, Lima, Dover, and Mansfield and destined to typical eastern points on the Pennsylvania when transited at Hagerstown (using the P. R. R. route) as compared with transit at Fort Wayne, Ind., and at Akron, Toledo, and Circleville, Ohio. In each instance the base rates applied were the same regardless of where transited because the origin and the destination was the same, but while the out-of-route mileage was generally greater in the case of Hagerstown, its back-haul charge was uniformly less. It therefore definitely appears that Hagerstown is not at a disadvantage as to grain originating in the intermediate territory. But more than this is the fact that Hagerstown can draw grain from all of the same origins and market it in the large destination territory available to it without back-haul charge, although [fol. 318] such C. F. A. competitors in the same instances would be subject to back-haul charges.

Of the transit points here named in the proposed report only Lancaster and York are at all comparable with Hagerstown. But even here the comparison is not a proper one. In the first place, in so far as Lancaster and York are on direct routes to eastern destinations on the Pennsylvania, the situation of Hagerstown, which is on a branch of the Pennsylvania, is not comparable, but it is comparable with such branch-line transit points on the Pennsylvania as Bedford, Dillsburg, Elizabethville, Greencastle, Littlestown, Reading, Reedsville, Schuyler, and South Danville, Pa., and Cumberland and Frederick, Md., and Norfolk, Va. Complete comparisons are made as between these points and Hagerstown in Exhibit 47, and as will appear therefrom Hagerstown is not at a disadvantage in competing with transit operators at such points in the marketing of grain products in the destination territory involved. Of similar import is the comparison as between Hagerstown on the one hand, and the transit points of Cambridge, Md., and Norfolk on the other hand, in supplying markets on the Eastern Shore. These comparisons are set forth in Exhibit 50.

If comparison is made as between Hagerstown and other transit points served by the Pennsylvania which also require an out-of-route haul in marketing grain



on certain eastern lines other than the Pennsylvania, it will be found that Hagerstown already possesses a definite advantage. This appears from Exhibit 56. As there shown grain from Chicago transited at Bedford, Greencastle, or Littlestown, Pa., when destined to eastern points on the Central Railroad of New Jersey, the Delaware & Hudson, the Long Island, the Reading, and the Staten Island Rapid Transit railroads, is subject generally to an out-of-route charge ranging from 3 to 6 cents per 100 pounds, although when transited at Hagerstown there are routes in connection with the Western Maryland to the same destinations at the flat rate without the addition of out-of-route charges. Exhibit 57, which is a similar exhibit dealing with grain received at Wilmington, Del., over the Pennsylvania, discloses that shipments there transited would be subject to a combination of rates if forwarded to points on the Central Railroad of New Jersey or the Delaware & Hudson, and to an out-of-route charge of 9 cents if forwarded to destinations on the Reading there shown, although Hagerstown enjoys the flat rate to the same destinations over existing routes in connection with the Western Maryland.

In the second place, if comparison is made of Hagerstown, not as a branch-line point on the Pennsylvania, but [fol. 320] as a point on a through line of *another* railroad to the east, then the appropriate comparison is not with Lancaster and York, but with such transit points on through lines of *other* eastern carriers, as Geneva, N. Y., on the New York Central, Spencer, N. Y., on the Lehigh Valley, Horseheads, N. Y., on the Erie, Waverly, N. Y., on the Lackawanna, and Linfield, Pa., on the Reading. As shown in Exhibit 55, the through grain rates from Chicago to the East do not apply through these and similarly located transit points on other lines to local eastern destinations on the Pennsylvania, but such movements via those transit points would be at the higher combination basis (151-160). In the case of the five transit points named the percentage of circuitry to Salisbury, Md., would range only from 11.64 to 21.95 per cent. and to Jamesburg, N. J., only from 6.58 to 20.32 per cent. Of the 108 illustrations shown in the exhibit to the four typical Pennsylvania destinations, over 57 per cent involve a circuitry not in excess of 25 per cent. Thus, if the Commission should affirm the validity of the principle for which complainant contends, and should pre-

scribe through routes from the west to local destinations on the Pennsylvania in such manner as to make Hagerstown as a transit point on the Western Maryland intermediate to such destinations, and only for the purpose of permitting [fol. 321] transit thereat on the through rates, then it would seem that the same principle could be urged by the millers at such other eastern transit points to justify demands for the establishment of similar through rates on which they could reach the same Pennsylvania destinations at the flat rates.

In general, eastern transit points on the lines of one carrier do not have through routes on grain from the West to destinations on the lines of other carriers, particularly where the latter have their own routes from the West. Thus, grain received over the Pennsylvania and transited at York or Lancaster does not enjoy the through rates to eastern destinations on the Baltimore & Ohio, the New York Central, or the Erie (192-198).

For the foregoing reasons the findings above indicated at Sheet 4 of the report are inappropriate, erroneous, and contrary to the record. In their place the Commission should substitute a finding in substance as follows:

"Complainant refers to the fact that feed manufacturers at rate-break points and points in central territory served by direct lines of the Pennsylvania can reach eastern destinations on the lines of the latter at the through rates, while complainant on grain purchased at the same origins must pay a back-haul charge of 90 cents a ton in addition in marketing at the same [fol. 322] destinations. This, however, is a comparison of unlike matters. Thus, it is an inherent characteristic of the grain rate structure that transit operators in or near the origin territory have a narrower field from which to draw their grain, but a wide choice of markets, while transit operators in or near the destination territory can draw grain from a more extensive area, but have a less extensive choice of markets. But further than this, complainant as an eastern feed manufacturer has an advantage over similar manufacturers of mixed feeds in central territory and west thereof in that it can make deliveries more quickly, and this the record shows to be of some importance in the trade. The situation of complainant

is not different in principle from that of other eastern millers in that as a general rule such millers on the line of one railroad do not enjoy the use of the flat through rates in marketing their products at points on the lines of other carriers having their own routes from the West. In practice, however, complainant by reason of its situation has available to it a large and important destination territory which it can reach via the Western Maryland and its connections over which the joint rates apply, and in addition can reach a substantial consuming territory on the lines of the Pennsylvania and Baltimore & Ohio at small out-of-route charges. In the latter respect Hagerstown is in the same situation as transit points on branch lines of the Pennsylvania, such as Bedford, Greencastle, and Littlestown, [fol. 323] which likewise are subject to back-haul charges in reaching eastern destinations on the Pennsylvania. That the existing rate adjustment has not interfered with the free movement of complainant's products to destinations on the Pennsylvania appears from the fact that over a period of several years its tonnage in and out over the Pennsylvania has steadily increased (Ex. 60). The record requires the conclusion that complainant, as respects the markets available to it, is not at a disadvantage as compared with eastern millers generally, but on the contrary, has a more favorable rate basis than some similarly situated."

8. The Report is in error in failing to contain findings as to the effect on the rate structure of a logical and equal extension of the principle for which complainant contends.

The last paragraph of Sheet 4 of the Division's report begins as follows:

"The Baltimore & Ohio and Pennsylvania contend that a 'logical and equal extension of the principle' here involved would result in wasteful cross-hauling, 'seriously affect the entire structure of rates on grain and grain products subject to transit in trunk-line territory,' and materially reduce their revenues received [fol. 324] from out-of-line hauls. It is not necessary to determine here whether defendants apprehensions are well founded. It will suffice to say that even if they were,

that would be no reason for denying complainant just and reasonable through routes at the established joint rates."

Aside from the error of the report in referring to the Baltimore & Ohio and the Pennsylvania instead of *all* defendants other than Western Maryland, the report is seriously in error in failing to contain a definite finding as to the effect of a logical and equal extension of the principle here contended for by complainant. Thus, complainant contends that the Commission should establish such additional through routes via eastern transit points as may be necessary to enable transit operators at such points to market their products at points on other lines in that territory at the flat through rates, even though existing routes from the origins to such destinations are more direct, and the proposed routes would involve the services of more railroads. There can be no question but that the general application of such a principle would bring about a complete change in the structure of through routes and joint rates on grain as affects trunk line territory with resulting cross-hauling [fol. 325] and increased expense of operation by reason of the establishment of routes requiring the services of a greater number of carriers. If a logical and equal extension of the action which the complainant here seeks would bring about such a readjustment with its increased burden of expense upon the carriers, then the Commission should not enter upon such action blindly or say as does the report that "It is not necessary to determine here whether defendants' apprehensions are well-founded." If the Commission is prepared to find that it can consistently require the routes sought by complainant without bringing about such an undesirable and unjustifiable result, then it should state the reasons which differentiate the situations.

In this connection it is most significant that the proposed report makes no reference whatsoever to the intervention of Allied Mills, Inc., which has a mixed feed manufacturing plant at Portsmouth, Va., in the Norfolk district, from which it supplies its customers on the Eastern Shore.

This intervener receives inbound grain and milled products over the Pennsylvania, and in marketing its products on the Eastern Shore is subject to back-haul charges not less in any instance, and greater in some instances, than the back-haul charge applicable via Hagerstown to the

[fol. 326] same destination. If the decision of the Division stands, the Portsmouth intervener would undoubtedly ask the establishment of the flat rate from Chicago over routes in connection with the Chesapeake & Ohio, the Norfolk & Western, or the Virginian and thence via the Pennsylvania to Eastern Shore points (19, 28-30, 131, 140-141; Ex 55). Since competing feed manufacturers are fully aware of the significance of the principle which complainant here seeks to establish, the Commission would not be justified in shutting its eyes to the consequences of the action complainant urges upon it. On the contrary, it should fairly face the issue and take the whole situation into account in determining whether what complainant asks would be in the public interest.

For these reasons it is particularly amazing to find in the report the statement that even if defendants' apprehensions were well founded, "that would be no reason for denying complainant just and reasonable through routes at the established joint rates." The essential vice of such reasoning is that it *assumes* that the through routes sought are necessary and desirable in the public interest, although that is a matter which complainant has the burden to prove, and upon that assumption refuses to consider the effect of [fol. 327] the proposed action, whereas a judicial approach would suggest, as indeed the statute requires, that the logical consequences of such a requirement be taken into consideration in determining *whether* the through routes sought are necessary or desirable in the public interest.

These defendants therefore ask that the above-quoted language be stricken from the report and that there be substituted therefor a finding substantially as follows:

"In essence complainant's contention is that the Commission should establish such additional through routes via eastern transit points as may be necessary to enable transit operators at such points to market their products at points on other lines in that territory at the flat through rates, even though existing routes from the origins to such destinations are more direct, and the proposed routes would involve the services of more railroads. The general application of such a principle would bring about a complete change in the structure of through routes and joint rates on grain as affects trunk line territory with resulting

cross-hauling and increased expense of operation. Since the public ultimately pays the transportation bill, these facts necessarily bear upon the question as to whether the through routes sought have been shown to be necessary or desirable in the public interest."

[fol. 328] 9. The report is in error in improperly accepting statements in the first *Stickell case* as facts in this case which the record herein disallows.

Beginning at line 4 of sheet 5 of the report the following statement appears:

"The routes sought up to Hagerstown are well established and generally accepted as reasonable by shippers and the carriers parties thereto to points in eastern territory. There is no showing or contention that those routes would be less economical as parts of the through routes sought to destinations considered on the Pennsylvania than to destinations on the other carriers in eastern territory."

The foregoing statements are not based upon anything in this record, but upon the following statements contained in the report of the Division in the first *Stickell case*, 146 I. C. C. 609, at page 615:

"The Pittsburgh Dispatch is a well-established freight route maintained by the New York Central system, the Pittsburgh & Lake Erie being part of that system, in connection with the Western Maryland and the latter's connections. It now operates via Hagerstown, as has already been shown, to various destinations on the [fol. 329] Reading, Central of New Jersey, and their connections. There is nothing of record to indicate that it would be less economical to the destinations proposed and routes 1 and 2 than to the destinations now available."

These statements cannot be taken as statements of fact in this case, not only for the reason that they are not here of record, but also because the instant record shows largely to the contrary, particularly in respect of the relative economy of the existing and proposed routes. The quotation does show, however, that the reference to routes being "well-established" refers only to the Pittsburgh Dispatch



route and not to the Wabash route, and indicates that it has reference to existing routes in connection with the Reading and Central of New Jersey which would operate through Shippensburg, rather than through York or Fulton Junction.

The improper borrowing of these statements from the decision in the first *Stickell case* and the blind acceptance of them, is clearly erroneous. Thus, there is nothing in the law which makes relevant or material a comparison of the relative economy, for example, of the Pittsburgh Dispatch route via Hagerstown to destinations on the Reading or Central of New Jersey with proposed routes consisting of the same carriers up to Hagerstown and thence over the [fol. 330] Western Maryland to York or Fulton Junction and the Pennsylvania beyond. The proper comparison would be between the routes sought and existing routes over the direct line of the Pennsylvania. But aside from this, the theory of this statement in the report is in error as assuming to put a burden upon defendants to establish that a proposed route is less economical than an existing route. The burden is upon *complainant* to prove the contrary. But aside from these legal considerations, the propriety of the statements is in question as a matter of fact by reason of the testimony of Witness Clark as to the unusual quantum of operating service necessary to be expended in connection with the handling of traffic via York or Fulton Junction (227-235; Ex. 67).

For reasons indicated these defendants ask that the finding above quoted be stricken from the report.

10. The report is in error with respect to the relative economy of the routes via Hagerstown.

At Sheet 5 of the mimeographed report, in lines 10-17, the following findings appear:

“The routes sought in connection with the Pennsylvania would not only not result in any cross-hauling or wasteful transportation, but they would eliminate a [fol. 331] 149 mile out-of-line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown. The Western Maryland would bear all the transit and switching expenses at that point.”

These findings are not only without support on the record, but are contrary to the record.

In the first place, from rate-break points, common points, or local points served by it, the route of the Pennsylvania would furnish a *single-line haul* therefrom, while the required routes 1 and 2\* would involve the services of *four* and *five* railroads, respectively. A similar situation would obtain in respect of hauls from points on connections of these several lines. In every instance the route sought would involve the services of several carriers more than required over the direct routes of the Pennsylvania. Such multiple-line routes necessarily involve additional interchanges and additional transportation costs.

The statement in lines 30 and 31 of sheet 7 that the routes [fol. 332] sought would eliminate a 149-mile out-of-line haul is misleading for two reasons. In the first place, the comparison contemplated by Section 15 (4) would be with the *direct route* from origin to destination, which would be via the Pennsylvania and *would not involve the back-haul to Hagerstown*. But aside from this the Division's report fails to take into account the facts shown of record that from the standpoint of relative costs the route over the Pennsylvania, even including the back-haul to and from Hagerstown, represents a less expensive and therefore a more economical operation than either of the required routes.

The above quoted statement is further in error in its failure to distinguish between interchanges between railroads performing line-haul services and an interchange between a road-haul carrier and a carrier performing a terminal and switching service. In the case of traffic moving to and from Hagerstown over the Pennsylvania for transit at that point, the whole terminal service at Hagers-

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\* Route Nos. 1 and 2 prescribed in the report and order of March 18, 1943, correspond to routes A and B set forth in complainant's Exhibit 5, which are as follows:

Route A—N. Y. C. R. R. Youngstown, Ohio—P. & L. E. Connellsville, Pa.—W. M. Ry. to York, Pa., or Baltimore, Md.—P. R. R. to Destination.

Route B—Wabash R. R. to Toledo, O.—W. & L. E. to Pittsburgh Jct., Ohio—P. & W. Va. to Connellsville, Pa.—W. M. Ry. to York, Pa., or Baltimore, Md.—P. R. R. to Destination.

town, including the terminal switching service of the Western Maryland, is property to be regarded as the terminal service of the Pennsylvania. Collection of the freight charges on the inbound shipments and issuance of the bill of lading on the outbound shipments are in the hands of the [fol. 333] Pennsylvania, and the Pennsylvania bears the *per diem* expense while the car is on the Western Maryland through the means of reclaims. The cars are not inspected in connection with such a terminal switching movement as in the case of a regular road interchange. In this connection the study of relative costs contained in Exhibit 69 computes the *terminal* costs at Hagerstown at the higher average rate applicable to the Pennsylvania, although partly performed by the Western Maryland, the average terminal costs of which are shown by Exhibit 68 to be very substantially less than those of the Pennsylvania. This method of computation, therefore, overstates the Hagerstown terminal cost when the Pennsylvania's route is used, and understates its greater economy.

The statement in the report that the proposed routes would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown, as the Western Maryland would then bear them, is fallacious, since from the standpoint of relative economy such costs would have to be taken into consideration in either case, whether borne by the Western Maryland or by the Pennsylvania. In this connection the reference to absorption of switching charges is quite beside the point in any comparison of relative costs since a switching charge is merely a revenue rate, and does not necessarily represent [fol. 334] cost at all. The governing factor would be the costs incurred by the several carriers participating in the several compared routes.

These defendants ask that the above-quoted statement be deleted and that a finding be substituted therefor in substance as follows:

"The routes sought would involve the services of *three or four more* road-haul carriers than the present routes of the Pennsylvania. Such proposed routes would also be longer than those over the direct route of the Pennsylvania. While not quite as long as the route of the Pennsylvania via Hagerstown, the routes sought are shown to be relatively more expensive to operate."

11. The report errs in reciting as contentions material and relevant facts which are indisputable upon the record.

At Sheet 5 of the mimeographed report there appears the following paragraph:

"The Pennsylvania also contends that the routes sought are not 'necessary and desirable' in the public interest because of the fact that 'the complaint was not supported by any shipper of grain or its products at points of origin, by any receiver of mixed feed at destinations or by producers or consumers of grain in the Cumberland Valley' and because of the fact that 'upon [fol. 335] the record there is no basis for assuming that any of these are dependent upon the transit operation being performed at Hagerstown.'"

The report of the Division improperly here evades the making of a definite finding one way or the other in respect of important facts by making reference to them as a mere contention. The record either justifies their being found as facts or it does not. Moreover, the report improperly ascribes such contentions to the Pennsylvania alone, in disregard of the fact that *all* defendants except the Western Maryland have made common cause against the complaint. But more than this, the statement in the report is erroneous for the reason that it is so phrased as to indicate that these considerations were the only ones on which defendants rely to show that the routes are not necessary and desirable in the public interest.

Since the facts are indisputable upon the record, and since they are relevant and material to the issue presented, these defendants ask that the Commission revise the above described finding so as to read as follows:

"The complaint was not supported by any shipper of grain or its products at points of origin, or by any receiver of mixed feeds at points of destination, or by any producers or consumers of grain in the Cumberland [fol. 336] Valley. Upon the record there is no basis for assuming that any of these are dependent upon the transit operation being performed at Hagerstown. The only evidence offered to prove public interest is that the routes sought would be of advantage to complainant as a transit operator."

12. The report misapplies the decision in the Flory Milling Case.

Beginning at the bottom of Sheet 5 of the mimeographed report the Division quotes from the first *Stickell Case*, including its quoted reference to *Flory Milling Co. v. Central N. E. Ry. Co.*, 93 I. C. C. 129. The report of the Division fails, however, to recognize and be guided by the actual decision in that case, as distinguished from some of the general language therein, and thereby draws a conclusion which is inconsistent with that decision.

For these reasons the report is in error in not including in connection with the reference to the *Flory case* a finding substantially as follows:

“Based upon the facts in this record it now appears that the principles expressed in the foregoing quotation from the *Flory Milling case* require a dismissal of the complaint herein. Thus, the only additional routes required in the *Flory case* were the second, fifth, and [fol. 337] sixth routes there described. Of the second group of routes it was found that they were approximately of the same length as the existing routes and that the same number of carriers would participate. Of proposed routes five and six it was found that they would substitute one carrier for two in existing routes and that one carrier would thus be eliminated by the routes suggested. The failure and refusal of the defendants to establish through routes and joint rates over route 4, which would inject an additional carrier without compensatory advantage of shortened haul, route 3, which would short haul a carrier, and over proposed route 1, which would involve fourth section violations, was found not unreasonable. This case, of course, did not arise under the present statute, but it is significant that the Commission did not there require additional through routes where greater total service would have to be performed, nor even in such instances where some substantial right of the carriers would be thereby invaded. Applying these principles to the facts here shown it must be concluded, both upon the additional number of carriers which would be involved in the proposed routes and on the showing of greater relative costs of service over such proposed routes than over existing routes, that the proposed routes have not

been shown to be necessary or desirable in the public interest."

[fol. 338] 13. The report is in error in concluding that the routes sought are necessary and desirable in the public interest.

At Sheet 6 of the report the Division announces its conclusion as follows:

"We conclude that the routes sought are necessary and desirable in the public interest, but the Pennsylvania contends that even if that be true the Commission is without authority to require the establishment of the routes sought as they would short-haul the Pennsylvania without its consent."

As hereinbefore shown, the foregoing conclusion is contrary to the facts of record and to the principles actually followed by the Commission in the *Flory case*. These defendants ask that the finding be reformed to read as follows:

"We conclude that the routes sought are not necessary or desirable in the public interest, but, even if they were, the defendants contend that the Commission would be without authority to require the establishment of the routes sought as they would short-haul the Pennsylvania contrary to the provisions of Section 15(4) without its consent."

14. The report errs in its findings as to the carriers that would be short hauled by the routes required.

In the first paragraph of Sheet 7 of the mimeographed report the following statements appear:

[fol. 339] "The carriers that would participate west of Hagerstown over routes 1 and 2 would receive the same hauls they now receive on traffic via Hagerstown to destinations in trunk-line territory. The Pennsylvania is the only carrier that would participate in those routes that invokes the short-hauling restriction in section 15(4), but as no additional routes are sought on traffic originated by it the underlined proviso does not affect the issues here considered."



The statements quoted are, of course, intended to make the point that carriers other than the Pennsylvania which would be involved in routes 1 and 2 as prescribed would not be adversely affected thereby for the reason that their hauls would be the same as in connection with their present routes via Hagerstown to Trunk Line destinations. But in comparing routes 1 and 2 with the existing routes of the New York Central and the Wabash in connection with the Western Maryland to the important eastern destination territory to which the flat rates apply, the report leaves out of consideration the fact that the required routes may short-haul some of the participants therein other than the Pennsylvania. In assuming the contrary the report of the Division is without support in the record. Since the report makes this assumption without record basis, it is fair here [fol. 340] to note the fact that the Wabash originating grain at Chicago, East St. Louis, or Decatur, Ill., for example, destined to points on the Eastern Shore, such as Salisbury, N. Y., and there turn it over to the Pennsylvania.\* Thus, the proposed route 2 would short-haul the Wabash on grain destined to the Eastern Shore. The point of the matter is that there already exist an ample number of adequate and efficient routes from points on other lines in central territory which make direct interchange with the Pennsylvania therein, and from which the flat rates apply to eastern destinations on the lines of the latter (208-210). Therefore the statements quoted are misleading in their implication that such lines in central territory are not concerned by the prescription of the routes required. It may very well be that such prescription will tend to divert traffic destined to points on the Pennsylvania from routes which now give them longer hauls to routes which would give them shorter hauls. In the absence of anything in the record to show that this is not the case, the report is not justified in making the assumption which it does. Moreover, *no defendant has here consented to be short-hauled.*

[fol. 341] But aside from any interest of such a character, the defendants generally have a very practical concern in

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\* Agent B. T. Jones' Tariff, I. C. C. 3356, which publishes the grain rates, makes reference to Wabash Routing Guide, I. C. C. 6170, which provides the routes indicated.

not wanting to disrupt the present adjustment of through routes applicable to eastbound rates on grain, which would be brought about by a general recognition of the principle for which the report seems to stand, viz., that additional through routes via transit points in trunk line territory should be prescribed to avoid back-haul charges whenever the mileage circuitry of such routes as compared with the direct routes would not be excessive.

In order to enable the transit operator at Hagerstown to escape a reasonable back-haul charge, the Division's report would require origin lines in Central territory to short-haul themselves and become parties to multiple-line routes that would place the transit point intermediate to final destination. This requirement would affect all lines in Central territory, which have direct connections with the Pennsylvania and join in direct routes to the destination territory. Although presently having such direct routes, such lines under the order would have to establish and to perfect through routes and divisional arrangements in connection with the New York Central, Pittsburgh & Lake Erie, Western Maryland, and Pennsylvania, and in connection with [fol. 342] the Wabash, Wheeling & Lake Erie, Pittsburgh & West Virginia, Western Maryland, and Pennsylvania.

The order would also require the establishment of new through routes via the New York Central or Wabash and connections from market points and from common points of origin in Illinois, Indiana, and Ohio, to destinations on the Pennsylvania in the territory involved, although the Pennsylvania now serves the same market points and common points, and presently can and does haul the traffic therefrom to the destination territory. In this respect the Commission's order accomplishes a very real form of short-hauling the Pennsylvania, since it would serve to deprive it of handling traffic as to which it is the origin carrier insofar as concerns the haul from the market point or the common point under the reshipping or local rates. The rates on grain and grain products from Central territory to the East are depressed and exceedingly low (86-89; Exs. 23-25). It therefore follows that the division of these rates between five or six railroads instead of the present two-line division would make for excessive accounting and result in extremely thin earnings for each of the multiple lines.

The above-quoted language should be eliminated and there should be substituted therefor a finding substantially as follows:

[fol. 343] "The Pennsylvania specifically invokes the short-hauling restriction in Section 15(4), but all carriers defendant other than the Western Maryland unite in opposing prescription of the routes sought. None of the defendants here consents to the prescription of any through routes which would short-haul it. We cannot here properly assume that lines in central territory which would be participants in routes 1 or 2 would not be short-hauled by being required to join therein in view of the existence of routes from points on those lines to direct connections with the Pennsylvania in central territory which might give them greater hauls."

15. The report errs in not recognizing that the propriety of the routes prescribed is to be determined by comparison with the Pennsylvania's direct routes rather than with its route via Hagerstown.

In the last paragraph on sheet 7 of the mimeographed report, the Division recites that complainant does not question the adequacy, efficiency, and economy of the Pennsylvania service over its direct routes, but only over its route via Hagerstown. But the report wholly fails to recognize that the proper comparison is not of the Pennsylvania's route through Hagerstown, but with its direct routes between points of origin and destination, which the record [fol. 344] demonstrates are adequate, efficient, and economic. Complainant's position as to these direct routes should dispose of the complaint since complainant thereby concedes that the routes sought are not needed to provide adequate transportation between points of origin and destination and are not more efficient or economic than the existing routes between those points.

These defendants respectfully submit that in connection with the language quoted the Commission should include a statement substantially as follows:

"But even if the record supported this contention, which it does not, it would here be without significance. The comparison of routes contemplated by Section

15 (4) is as between the proposed routes and the existing *direct* routes, and not, as in this case, with existing route of the Pennsylvania *via Hagerstown*. In our Report on Further Hearing in the former case brought by this complainant, *Stickell & Sons v. Western M. Ry. Co.*, 154 I. C. C. 759, at page 761, we stated:

“ ‘In this connection complainant seems to be of the opinion that the question is whether the proposed through routes would short haul the objecting defendants in comparison with other routes which exist or could be constructed *through Hagerstown*. This, [fol. 345] however, is clearly not the question, for there is no express requirement of law that routes must pass through particular intermediate points, and neither the short-hauling limitation nor any other provision can be read as implying any such requirement.’ ”

16. The report errs in failing to disallow complainant's comparisons of the speed of service over the respective routes.

Beginning at the bottom of Sheet 7 and extending over to Sheet 8 of the mimeographed report the following statements appear:

“Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning and information received from the Western Maryland, complainant estimates that it would save two days in reaching destinations in the Delmarva Peninsula if the routes sought were established. Its experience shows that it takes one day each way between Harrisburg and Hagerstown and one day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of four days required for the out-of-line service, and that it takes an average of [fol. 346] three to four days for the movement of a car from its plant to destinations on the Delmarva Peninsula.”

The report is in error in referring to "interchange service" at Hagerstown in connection with shipments in and out via the Pennsylvania as if such service were the equivalent of interchange service between road haul carriers. For the reasons stated in connection with an earlier assignment of error\* interchange service between road haul carriers is of substantially different character and greater measure than an interchange of cars as between a carrier performing a road-haul service and another carrier performing terminal switching for it. There is therefore no reason to conclude that the total terminal service performed at Hagerstown on a Pennsylvania shipment for complaint is any greater or more expensive than a terminal service performed by the Pennsylvania alone.

The report is further in error in this respect because of its failure to disallow complainant's estimate of the time which would be saved by use of the routes sought instead of the route of the Pennsylvania to and from Hagerstown. The record shows that inbound cars over the Pennsylvania consigned to complainant are generally [fol. 347] "order notify" shipments and are set off in the Pennsylvania's No. 1 Yard at Hagerstown so that they can more promptly be handled when the bill of lading is lifted and the car ordered in (235-236). It is, therefore, possible that any delay in making delivery on inbound shipments is due to complainant's delay in lifting the bill of lading. But in any event, any such delay in connection with the inbound movement would have no relation to or bearing upon complainant's ability to make prompt delivery of feeds on the Peninsula after the receipt of orders therefor. The proper comparison would be of *outbound* shipments via the proposed routes with similar shipments via the Pennsylvania. The fact is that the only competent evidence of record by way of comparison of the time in transit over existing and proposed routes from Hagerstown to eastern destinations on the Pennsylvania is that of Witness Clark. That evidence shows beyond peradventure that the better service would be by the Pennsylvania's existing routes. To some of the destination territory, such as to Chatham, Pa. (a point of destination regarded by complainant as typical) a movement over the

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\* *V. supra*, p. 10, Sec. 10.

proposed routes would, because of the arrangement of train service, be extremely slow and impracticable. (236, 237, 241-244).

The last sentence in the portion above quoted should be [fol. 348] deleted from the report and in its stead should be substituted a finding in substance as follows:

“The record does not justify a finding to this effect, but on the contrary discloses that the routes sought would not be as expeditious as the existing routes of the Pennsylvania.”

17. The report is in error in failing to find that the proposed routes would not be as adequate, expeditious, efficient, or economical as the existing routes.

The first complete paragraph at Sheet 8 of the report which compares the service over the route of the Pennsylvania and over the routes prescribed to the Delmarva Peninsula is in error in that it fails to reflect the facts of the record, and because it goes beyond the record for unjustified assumptions to defeat the facts as shown. The paragraph now reads:

“The Pennsylvania does not categorically deny the latter statement but says ‘ordinarily speaking’ it holds itself out to ‘make’ established schedules from Hagerstown of 24.75 and 31.5 hours to Salisbury and 29 hours 55 minutes and 39.25 hours to Cape Charles, Va. It does not allege or show that it maintains through train service from Hagerstown to points on the Delmarva Peninsula. In fact the evidence indicates that it does [fol. 349] not. The Pennsylvania says that there have been delays in classification and at times excessive traffic and emergency conditions which have prevented it from maintaining those schedules. A witness for the Pennsylvania expressed the opinion that physical operations, presumably after the interchange at Hagerstown, are better via Enola Yard than via York or Fulton Junction and estimates that a movement from Hagerstown via York would require 36.5 hours to Salisbury and 49.25 hours to Cape Charles and via Fulton Junction, 33 hours to Salisbury and 45.75 hours to Cape Charles. No explanation is given why a longer time is estimated for the haul from Salisbury to Cape



Charles for traffic moving over the sought routes than is allowed in the present schedules for traffic moving via Enola Yard."

The first quoted sentence is contrary to the record. The "latter statement" mentioned presumably refers either to the whole of lines 4 to 10 at sheet 8, or to the last clause of that sentence in lines 8-10. For the reasons explained in connection with the next preceding assignment of error, those statements are unsound and unjustified. If the reference is to the statement in lines 8 to 10 "that it takes an average of three to four days for the movement of a car from its plant to destinations on the Delmarva Peninsula," [fol. 350] then the testimony of witness Clark is properly to be considered as a categorical denial thereof. This is the meaning of his statement that "ordinarily speaking" the Pennsylvania holds itself out to "make" the established schedules indicated. This is the operating man's way of saying that that is the movement given under ordinary or normal conditions. Thus a passenger timetable contains "established schedules" and the public makes use of them in accordance therewith. The same term does not take on a different meaning when applied to freight trains.

The proposed report is flatly in error in saying that the Pennsylvania "does not allege or show that it maintains through train service from Hagerstown to points on the Delmarva Peninsula. In fact the evidence indicates that it does not." "An established schedule" from an origin to a destination, such as from Hagerstown to such a point as Salisbury, is a "through train service" in the same sense as is an established schedule from Chicago to Salisbury. In the latter instance the train from Chicago must be broken up and classified at Enola Yard and again at Edge Moor Yard, but connections are provided at those points to handle the Salisbury traffic. Likewise, in the case of Hagerstown business for the same destination, the cars are yarded and classified at Enola and again at Edge Moor, but connections are provided at those points in the [fol. 351] same manner as for the Chicago-Salisbury business. This is the meaning of the evidence when interpreted in the light of the general understanding of such things by competent parties.

In this connection the report is unfair in regarding the witness' reference to occasional delays because of emer-

gency conditions as representing the ordinary or normal condition. The fact is that it is not. This is a situation which occurs in the case of all traffic when congestion, weather conditions, wrecks, and similar interferences occur.

The fifth sentence of the above-quoted paragraph is objectionable on several counts. Thus on a factual matter of substance the report fails to contain a definite finding of fact. More than this it is erroneous to "damn with faint praise" the testimony of the witness by referring only to his expression of *opinion* on the subject, without reference to the detailed facts presented by him which indicate some of the background for that opinion. In addition, the inclusion of the expression "presumably after the interchange at Hagerstown" is erroneous. This is the Division's presumption and not that of the witness.

The concluding sentence in the above-quoted paragraph is another instance in which the Division, by adopting the [fol. 352] finding of the Examiner, has gone outside the record for reasons to excuse the making of definite findings of fact based upon the record. Thus, although the record is perfectly clear and undisputed, based upon the testimony of a competent operating officer, that a movement from Hagerstown via York or Fulton Junction to Salisbury or Cape Charles would require a longer time than over the route of the Pennsylvania through Enola, the Division has *assumed* the unreliability of this evidence because the witness did not explain a greater disparity in time as between the two routes when the destination was Cape Charles rather than Salisbury. As will subsequently be noted in dealing with the points of law involved, there was and is no burden upon the defendants to establish such facts with respect to the efficiency or economy of operation of proposed routes as would be necessary to enable the Commission to prescribe routes which would short haul carriers without their consent.

The same concluding sentence of the paragraph above quoted was included in the Examiner's report, and because he had gone outside the record to defeat what was in the record, these defendants, although under no burden of proof in the matter, but merely as an evidence of good faith, reproduced in their exceptions (pp. 55, 56) a statement re-

ceived from Witness Clark which explained the reason for [fol. 353] the greater disparity. This statement follows:

"As to the statement that 'no explanation is given why a longer time is estimated for the haul from Salisbury to Cape Charles for traffic moving over the sought routes than is allowed in the present schedules for traffic moving via Enola Yard': First of all no explanation is required since the facts have been stated and should be accepted by the Examiner in the absence of proof to the contrary. However, the difference is brought about by the fact that the P. R. R. operates a freight train (D-27) from Edge Moor to Delmar (Salisbury freight being moved from Delmar to Salisbury by yard power) and another train (D-3) from Edge Moor through to Cape Charles. If the traffic were received at Fulton Jet. or at York it would receive D-27 movement to Delmar (for Salisbury) and if for Cape Charles it would have to be handled from Edge Moor to destination in D-3. On the other hand if routed via Enola Yard in the case of the 24.75 hours to Salisbury and 29.92 hours to Cape Charles both Salisbury and Cape Charles would be handled in D-3. In the instance of the 31.5 hours to Salisbury and 39.25 hours to Cape Charles the move would be D-27 to Delmar (for Salisbury) and D-3 to Cape Charles, the same as for the Fulton Jet. and York shipments, but the movement into Edge Moor Yard from Enola would be [fol. 354] by train TH-2 operating via Perryville, whereas the Fulton Jet. would be by MD-116, and the York shipment by YP-2 to Columbia and ATH-2 to Edge Moor. Consequently the elapsed times to Salisbury via the various routes would differ, hence the subtraction of such elapsed times from the times to Cape Charles would give a varying amount according to the route and trains used. In other words the attempted calculation by the Examiner fails to take into consideration that the times stated are the elapsed or over-all times over the different routes up to Edge Moor."

Complainant in its Reply (pp. 14, 15) in respect of this matter stated:

"This exception is supported by 'testimony' received after the record was closed and the report of the Ex-

aminer served (p. 55 of exceptions). Such procedure is unfair to complainant and also to the Examiner. It is hardly necessary to remind the Commission that it likewise hardly conforms to its Rules of Practice."

But granting that the Commission was not entitled to receive or to rely upon such explanation in view of complainant's lack of opportunity for cross examination, and in view of its objection, nevertheless, the Division was not justified in failing to make the findings required by the facts [fol. 355] of record and, contrariwise, in disallowing their force on the basis of an unjustified assumption.

For these reasons these defendants ask that the above quoted paragraph be amended to read as follows:

"Enola on the Pennsylvania, opposite Harrisburg, Pa., is an important yard on the Pennsylvania which receives and dispatches traffic in all directions and to and from which numerous regularly scheduled trains operate in addition to extra sections and extra trains. There are three scheduled trains in each direction between Enola Yard and Hagerstown and also many extras and additional sections of these trains (226-227). The arranged freight train movements in and out of Enola provide two schedules from Hagerstown to the Peninsula. The first of these has an elapsed scheduled time to Salisbury of 31 hours and 30 minutes, and to Cape Charles of 39 hours and 15 minutes. The second schedule provides an elapsed time of 24 hours and 45 minutes to Salisbury and 29 hours and 55 minutes to Cape Charles. While the Pennsylvania interchanges freight with the Western Maryland at various junctions, including Fulton Junction and York, there are no arranged freight train schedules, with the Western Maryland. Cars out of Hagerstown operating over proposed routes with the Western Maryland through Fulton Junction would require 33 hours to Salisbury [fol. 356] and 45 hours and 45 minutes to Cape Charles; and via York would require 36 hours and 30 minutes to Salisbury and 49 hours and 15 minutes to Cape Charles (238, 242). To Milford, N. J., a destination in which complainant is interested, the movement over the proposed route through Fulton Junction would be approximately a day slower than via Enola due to

lay-over at Edge Moor Yard or Philadelphia Yard to make the connection to Milford, due to the fact that the Pennsylvania's schedules are not set up to handle Milford traffic out of Fulton Junction (Exhibits 3, 4; 244). Chatham, Pa., mentioned in complainant's Exhibits 3 and 4, which is located on one of the Pennsylvania's branches between Pomeroy and Avondale, Pa., has only tri-weekly service and could only be reached from Fulton Junction via Philadelphia or via Harrisburg and Lancaster (241, 242). An operating officer of the Pennsylvania, after testifying to these and other matters affecting operating conditions, expressed the definite opinion that from the standpoint of physical operation the routes via the Pennsylvania from Hagerstown are more adequate, expeditious, and efficient than either of the proposed routes. The record requires the conclusion that the proposed routes are not needed to provide adequate transportation and that they are not as efficient or economic as the existing direct routes between points of origin or destination or even as the existing route via Hagerstown."

[fol. 357] 18. The report fails to make proper findings concerning the operating disadvantages of the prescribed routes via Fulton Junction and York.

The report of the Division at sheet 8 contains the following paragraph:

"The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction only once every 24 hours. Consequently the interchange tracks at those junctions are now used to near and sometimes to full capacity. The limited facilities and operating difficulties encountered at or near those plants are described in considerable detail. The evidence does not show, however, that those conditions are any more difficult than operating difficulties encountered at Hagerstown."

The foregoing paragraph fails to reflect the record and fails to contain findings responsive to the record. The complaint herein asks the establishment of new through routes via certain junctions between the Western Mary-

land and the Pennsylvania. The operating conditions which would attend the movement of traffic via such routes, and particularly with respect to the effect of such conditions upon the efficiency and economy of such movements are of substantial significance and relevancy to the question as to [fol. 358] whether such additional through routes should be established at all, and if so via what junctions. Yet the proposed report omits any adequate reference to the evidence on this subject by the statement that "The limited facilities and operating difficulties encountered at or near" York and Fulton Junction "are described in considerable detail." In this connection the proposed report by the use of the word "Consequently" in the second sentence erroneously implies that the use of present interchange tracks at those junctions to capacity or nearly so is *because* the interchange is made "only once every 24 hours."

The last sentence of the paragraph, to the effect that the evidence does not show that operating conditions are more difficult at York or Fulton Junction than at Hagerstown is flatly contrary to the record. The discussion at this point relates *not* to a comparison of *present* and proposed routes, but rather to a comparison of the proposed routes via York and Fulton Junction with *proposed routes 1 and 2 up to Hagerstown and thence Pennsylvania Railroad to destination*. The only evidence on the subject is that of witness Clark. At pages 236-237, in response to a question of the Examiner this witness testified as follows:

"Exam. Berry:—It would be more economical if you received the car at Hagerstown and carried it up [fol. 359] around Harrisburg than to receive it at Fulton Junction or York.

"Clark:—Absolutely. • • •"

Again at pages 241-242 Mr. Clark testified:

"Q. Well, considering the Fulton Junction, York, and Hagerstown as possible gateways by which to receive traffic over routes from the Western Maryland, which are the worst and which are the better, and how do they compare?

"A. Well, as of the three, Hagerstown would be the best, and that is exemplified by the scheduled service."



These defendants ask that the above quoted paragraph of the report be deleted and that in lieu thereof the Commission find as follows:

“From an operating standpoint Fulton Junction would be unsatisfactory as an interchange point on this traffic. There is but one interchange track at that point. It holds about 28 cars and is used by both roads, as well as serving three private sidings (227-229). Cars received from the Western Maryland at this point must be handled to the Pennsylvania's Gwyn's Run Yard, about  $1\frac{1}{2}$  miles south. This involves a partial use of a main passenger track near the south entrance to the B. & P. tunnel. Because of the large number of train [fol. 360] movements through this tunnel—an average of 177 per day—there is much interference to such freight movements.

“After moving through the B & P tunnel which is  $1\frac{1}{2}$  miles long, the cars received from the Western Maryland, as described pass through the intricate Baltimore Union Station track layout and thence through the Union Tunnel, which is six-tenths of a mile long, and from there to Bay View Yard. This yard is about 10 miles from Gwyn's Run Yard. At that point cars so handled would be dispatched in road trains. Considering the train density and block restrictions through the Baltimore tunnels and station area, Fulton Junction would not be an efficient or economic point of interchange for this traffic” (227-232; Ex. 67).

“The interchange between the Western Maryland and the Pennsylvania at York is not such as to make a route *through* that junction an adequate or efficient or economic one. The interchange track is about 3 miles from the Pennsylvania's yard and to get cars from it the Pennsylvania engines must pass through city streets, passing 18 crossings at grade. This movement is through a heavy industrial area, and interference from switching engines is frequent. While York was established by the Commission as an interchange point between these roads for taking care of traffic originating or terminating in that area,\* it would [fol. 361] not be satisfactory as a *junction* on through traffic. The arranged service from York to eastern points operates over a single-track line of limited ca-

capacity to Columbia, Pa., 13 miles distant. Here cars for the Eastern Shore would have to be cut out and placed so as to be picked up by a train operating out of Enola Yard through Perryville, Md., to Edge Moor Yard near Wilmington. Here further classification would be necessary (232-235).

"Because of the method employed in serving certain of its branch lines, the proposed routes to some of the destination territory on the Pennsylvania, in which complainant is interested, would be wholly inadequate as against a satisfactory service now available by the route of the Pennsylvania to and from Hagerstown (241)."

19. The report errs in its discussion of the adequacy of the interchanges between the Western Maryland and the Pennsylvania at York and Fulton Junction.

The last paragraph at Sheet 8 of the report, including its quotation from the *York Switching case*,\* is irrelevant to any issue in this case, and has no proper place in the report. The complaint herein presents no question concerning the *adequacy* of any *interchange* between the West-[fol. 362] tern Maryland and the Pennsylvania *as such*, nor have the parties been heard upon any such issue. The discussion indicates that the Division has wholly failed to distinguish between a physical adequacy to accomplish an interchange of cars, and the question of adequacy, efficiency, and economy of operation which is significant in the determination as to whether particular proposed through routes are necessary or desirable in the public interest and whether they are routes which the Commission may lawfully prescribe. The inapplicability of the discussion in the report to the present situation will appear from the following illustration. Thus, *a very substantial*, if not the most important, *part of the operating difficulties* which retard the transfer of freight from Western Maryland road trains to Pennsylvania road trains in the Baltimore area via Fulton Junction arise from the *interference produced by fast passenger trains and through freight trains operating between Washington and points north of Baltimore through the two Baltimore tunnels and the Baltimore Union Sta-*

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\**York Mfrs. Asso. v. P. R. R. Co.*, 107 I. C. C. 219 (1925).

*tion area.* If the reference in the second sentence of the paragraph is taken as apparently intended, then it would seem to mean that the Pennsylvania should make whatsoever adjustment is necessary in its through train service, ~~or~~ in its physical facilities in the Baltimore area, such as [fol. 363] by increasing its tunnel capacity, so that traffic received in interchange by the Western Maryland at Fulton Junction could be more quickly be incorporated into road trains in the Bay View Yard north of Baltimore. The point of the matter is that Section 3(3), now Section 3(4) of the Act, has nothing to do with the instant case. The question for the Commission to determine is whether *complainant* has shown that the *proposed routes* are necessary and desirable in the public interest and whether it has also shown that such proposed routes are needed in order to provide *adequate, and more efficient, or more economic, transportation.* Defendants submit that this the complainant has not done.

20. The report errs in mistreating and disallowing the evidence of relative costs of transportation over the existing and proposed routes.

The paragraph at Sheet 9 of the Division's report which deals with defendants' evidence of the relative costs of service over existing and proposed routes is in error in the several respects below noted. The paragraph reads as follows:

"The Pennsylvania also contends that it is more economical to transport traffic over its direct route and its routes via Hagerstown than it would be to transport it over routes 1 and 2. As evidence thereof [fol. 364] it introduced a cost study based on annual reports filed with the Commission in which the formula used by the Commission's Bureau of Statistics in its Statement No. 3812 of March 1938 was followed generally with some variations. That study purports to show the cost of transporting a car of grain weighing 33 tons over the direct routes of the Pennsylvania, its routes via Hagerstown, routes 1 and 2, and other routes between selected points. Among other things it purports to show that, based on the Pennsylvania's average system costs and the average system costs of the other carriers that would participate in routes 1 and

2, it costs less to transport a car of grain over the Pennsylvania's routes via Hagerstown than it would to transport it over routes 1 or 2. The Pennsylvania does not contend that the study shows the cost of handling grain to the destinations under consideration but states that it furnishes a 'reasonably reliable basis for determining the relative costs of transportation.' Even as to relative costs its value, if any, is limited to average system costs on all less-than-carload and carload freight, while here we are dealing with a heavy loading commodity moving comparatively long distances in well-defined channels."[\*]

[fol. 365] (1) The report of the Division fails to contain any definite finding as to whether the routes sought by complainant have been shown to be needed to provide adequate transportation and are more efficient or more economic in respect of the relative costs of operation than the existing direct routes between points of origin and destination or than the existing route via Hagerstown. As hereinafter argued more at length,\*\* amended Section 15(4) of the Act makes the jurisdiction of the Commission to prescribe the routes sought dependent upon its being able to find that they will be less expensive to operate than the existing routes and also that the sought routes are needed to provide adequate transportation. Because such findings are jurisdictional, the report greatly errs in failing to include definite findings on the subject.

(2) The above-quoted portion of the proposed report is in error in that it places on defendants the burden of proving that the existing routes are more economical of operation than the proposed routes. The law casts no such burden on the defendants, but rather on the complaint to prove that such routes are less expensive to operate than the existing routes. This clearly has not been done and the Commission's report should so find.

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\* The proposed routes through York or Fulton Junction can not properly be said to be "well-defined channels" for the movement of grain and grain products from C. F. A. and the West to eastern points on the Pennsylvania.

\*\* V. *infra*, p. 77.

[fol. 366] (3) The above-quoted paragraph is also in error because of its failure, and the failure of the report at any point, to contain an intelligent appraisal of the cost data of record in the light of the issues to which they were directed, and because of the erroneous interpretation and conclusion announced regarding them. Some of the more glaring errors contained in this portion of the report in these respects will be noted.

(a) The last sentence of the above-quoted paragraph concludes that the cost comparisons embraced in Exhibits 68 and 69 include "average system costs on all less-than-carload and carload freight." If any analysis at all had been made of the cost data underlying the comparisons it would have been seen that the costs applicable to less carload traffic, such as platform costs, etc., were eliminated, and are not included in the cost comparisons of the respective routes.

(b) The reference in the concluding sentence of the above-quoted paragraph to the traffic involved as long-haul traffic, and the conclusion drawn therefrom—that the cost comparisons are accordingly of limited value—indicate a complete misapprehension as to the nature of the cost comparisons. Since such comparisons are based on costs which have been separated as between line and terminal elements, comparisons based upon them are not subject to [fol. 367] criticism based upon differences in the hauls of the traffic involved from that of all traffic.

(c) In its failure to give weight to the data covering the relative costs of operating the existing and proposed routes, on the ground that they are average system costs, the above-quoted portion of the report indicates that such data have not been given consideration by any of the Commission's staff informed with respect to such matters. This appears not only from its virtual general condemnation of system average costs as such, but also from its disallowance of them as here employed in this case.

Taking *first* the question of the *reliability of system average costs in general*, it has, of course, long been recognized that cost units, such as costs per car-mile or per ton-mile, which include both line and terminal elements on an average basis, may fail of reliability where applied for distances shorter or longer than the average hauls in which

such costs were incurred. This criticism is, of course, obviated if costs are computed under a proper separation of line and terminal cost elements.

The Commission has recognized that the science of railway cost accounting has not developed to a point where a railroad can apportion to the transportation of a particular commodity with exactness its fair portion of costs in- [fol. 368] curred in common with the transportation of other commodities or of passengers. *Georgia Pub. Serv. Comm. v. Atlantic Coast Line R. Co.*, 186 I. C. C. 157, 187; *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 30 I. C. C. 597, 602; *Sugar from Key West*, 112 I. C. C. 347, 348. Recognizing the difficulties inherent in determining the transportation costs of handling a single commodity or kind of traffic, both the Supreme Court and the Commission have at times indicated that resort may be had to average costs of all transportation per unit of traffic. *A. C. L. R. R. v. Florida*, 203 U. S. 256; *Wood v. Vandalia R. R. Co.* 231 U. S. 1, 6, 7; *Smyth v. Ames*, 169 U. S. 466; *Georgia Pub. Serv. Comm. v. Atlantic Coast Line R. Co.*, 186 I. C. C. 157, 184. In *Baltimore & O. R. Co. v. United States*, 298 U. S. 797, the so-called *Citrus Divisions Case*, the Supreme Court, in dealing with the cost data on which the carriers there relied to prove confiscation, which data had not been computed upon a separation of line and terminal costs, said on this point at page 387:

“The burden on appellants, heavy though it is, does not require them to prove with arithmetical accuracy the cost of the transportation covered by the challenged divisions or the value of the property used to perform it, or the proportion attributable to that service. It is enough, if the evidence preponderating in their favor [fol. 369] reasonably warrants findings sufficient to support the decree sought. Many issues as to which demonstrable accuracy is impossible have to be decided by the courts. *In ascertaining cost of transportation of one out of many commodities hauled by railroads it is impossible to attain precision. Mere lack of it is not ground for objection either to the evidence offered or the facts which it tends to prove.*” (Italics inserted.)

The Commission's own Bureau of Statistics has from time to time employed various formulae for the computa-



tion of cost data, which formulae customarily are based on the system figures of the several roads as reported to the Commission. One of these formulae is contained in Bureau of Statistics Statement No. 3812 of March, 1938, and it was this formula, with certain changes as indicated in Exhibit 68, that was the basis for the computation of the relative costs shown in Exhibits 68 and 69 (244-251).

In the Commission's investigation covering the transportation of new automobiles (No. 28190), the Commission's Bureau of Statistics has employed a formula, according to which cost data were assembled, which to an important extent involves the use of system average costs, although, of course, with separation of line and terminal [fol. 370] data. In the Commission's pending class rate and classification investigations (No 28300 *et al.*) a member of the Commission's staff introduced into the record, for different territories and types of equipment, cost scales computed from freight service costs as obtained to an important extent from system average data.

For these reasons these defendants respectfully submit that the Commission would not be justified in casting aside without any proper consideration, as the Division has done, the relative cost evidence contained in Exhibits 68 and 69.

Coming next to the erroneous disallowance by the report of defendants' cost data as bearing on the issues here involved, it is important to note that the criticism thereof wholly lacks justification. While the value of somewhat similar computations of relative costs, as applied to different territorial groups of carriers in the transportation of interterritorial traffic, has at times been discounted on the ground of the different consist of traffic in the different territories, such a criticism is not properly applicable in the instant case, since all the routes compared are *within a single territory* where the consist of the traffic is similar. In this connection it is significant that the concluding sentence of the above-quoted portion of the report appears to place great stress, in its disallowance of the cost data, upon [fol. 371] the fact that they are computed from average system costs "while here we are dealing with a heavy loading commodity . . . ." This, of course, means that the report indulges the *assumption* that the loading of the traffic involved of 33 tons inbound to Hagerstown and 24.6 tons outbound from that point is heavier than the average

of all traffic. There is nothing in the record to warrant this assumption. On the contrary, if from the revenue tons carried, as shown in Exhibit 68, there be deducted the l.c.l. tons (Item 12), and the difference be divided by the number of carload units as shown in Annual Report Schedule 541, excluding l.c.l. (on which Item 15 is based), it will be found that the average load of revenue carload freight in tons is as follows for the several lines which would be involved in routes 1 and 2, for which relative costs are computed in Exhibits 68 and 69:

Average Load of Revenue Carload Freight for the Year  
1940

<i>Railroad</i>	<i>Tons</i>
Pennsylvania	39.0
New York Central	35.8
Pittsburgh & Lake Erie	50.4
Western Maryland	40.0
Wabash	27.4
Wheeling & Lake Erie	43.0
Pittsburgh & West Virginia	41.0

[fol. 372] But even if the weight of complainant's traffic does differ from the average weight of carload freight on the lines of the several carriers particularly involved, the disparity in the weight of such traffic and of average carload traffic for the proposed routes, taken in their entirety, does not differ so substantially from the average weight of carload traffic on the Pennsylvania as to impair the value of defendants' cost comparisons for the purposes of this case.

For the reasons indicated, these defendants ask that the above-quoted paragraph be revised to read substantially as follows:

"While there was no burden upon them to prove a negative, the defendants introduced exhibits comparing the relative costs of transportation over proposed routes 1 and 2 and over existing routes of the Pennsylvania. The first of these comparisons is computed on the assumption of the through movement of a car of 33 tons of grain and grain products from western origins over proposed routes 1 and 2 and over the direct route of the Pennsylvania to eastern destinations with-

out any stopping in transit. The second exhibit is similar except that it is computed on the assumption of a stopping in transit at Hagerstown. Since a study of complainant's shipments via the Pennsylvania disclosed an average inbound tonnage of 33 tons and an average outbound tonnage per car of 24.6 tons, this exhibit takes into account the fact that for each car [fol. 373] inbound there would be 1.34 cars of outbound grain products. The costs are based on the annual reports of the carriers to this Commission for the year 1940, and are computed, with some modifications, according to the formula embodied in Bureau of Statistics Statement No 3812 of March, 1938, which is predicated upon a separation of line and terminal cost elements. The results of those studies may be summarized as follows:

#### COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Through Carload Movement of 33 Tons in Box-Car Equipment from Chicago, Ill., to Salisbury, Md.—Year 1940)

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R. direct.....	902	\$121 07	\$229 93
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R.....	958	165 81	327 85
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R.....	938	206 23	358 49

#### COMPARATIVE FREIGHT SERVICE COSTS

(Based on Assumed Carload Movement of 33 Tons from Chicago, Ill., to Hagerstown, Md., and of 1.34 cars of Outbound Products at 24.6 Tons Per Car to Salisbury, Md.—Box Car Equipment—Year 1940).

Route	Miles	Total Costs	
		Operating Expenses Only	Operating Expenses, Rents, Taxes, 5.75% Return, and Passenger Deficiency
P. R. R. direct.....	1051	\$184 10	\$349 65
N. Y. C.—P. & L. E.—W. M. (York, Pa.) P. R. R.....	958	191 18	377 64
Wab.—W. & L. E.—P. & W. Va.—W. M. (Fulton Jct. Md.) P. R. R.....	938	232 08	409 32

[fol. 374] "The foregoing data indicate that whether comparison is made of proposed routes 1 and 2 with the direct route of the Pennsylvania, or with its route via Hagerstown, the costs of operation via the proposed routes would be greater.

"While these cost figures do not purport to be specific costs of handling a particular commodity over particular lines of road, they do furnish a reasonably reliable basis for determining the relative costs of transportation, giving weight to line, terminal, and interchange elements, and for determining the relative efficiency and economy of the present and proposed routes. Our analysis and consideration of these relative cost data, as bearing upon the particular issues involved in this case, requires the conclusion that the proposed routes would be more expensive to operate than the existing routes of the Pennsylvania, and therefore are not needed in order to provide more efficient or more economic transportation."

21. The report errs in confusing the reasonableness of the 4½-cent out-of-line charge with the relative economy of the proposed routes and the Pennsylvania's route via Hagerstown.

The last paragraph at Sheet 9 of the mimeographed report reads as follows:

[fol. 375] "Yet the Pennsylvania while contending that from the standpoint of operating conditions and operating costs its routes via Enola Yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not."

Preliminarily it should be noted that neither the Chicago-Salisbury rate, nor any other of the rates involved in this proceeding are "prescribed" as stated. The record

(86-89; Exhibits 23-25) specifically shows that the grain rates involved are subnormal and less than maximum reasonable rates.

The conclusion of inconsistency which the report draws from the premises recited in the above quoted paragraph rests upon the fallacious principle set forth in its last sentence. The fact that a circuitous route may observe the same rate as applies over the direct route does not establish the unreasonableness of an extra charge for out-of-line service in connection with hauls over the direct route, even though such service, including the out-of-line service, is a [fol. 376] less expensive operation than over the circuitous line. If complainant thought the 4.5-cent back-haul charge unreasonable, it could have brought it in issue.

The above-quoted paragraph should be eliminated and in lieu thereof the Commission should find:

“The complaint avoids making any formal attack upon the reasonableness of the back-haul charge of 4.5 cents which applies on grain transited under the P. R. R. tariff at Hagerstown when the products go to eastern destinations on the Pennsylvania, although it is the avoidance of this charge which is the objective of the complaint. Similarly, the complainant’s evidence made no attack upon the reasonableness of this charge as such. While having therefore no burden to establish a negative, the defendants, to set at rest any question which might arise, included in their showing ample proof that the Hagerstown back-haul charge was well within the limits of reasonableness as compared with other such charges as are applicable at other transit points” (183-185; Exhibits 45, 47, 50, 61-64).

22. The report is in error in concluding that complainant’s shipments to Elsmere Junction indicate the inadequacy of the existing routes.

The third paragraph at Sheet 10 of the mimeographed report reads as follows:

[fol. 377] “That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagers-

town over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Delmarva Peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola Yard heretofore described."

The first sentence in the above-quoted finding is without support in the record, and is contrary to the record. The reason for shipping the 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction and then by truck to points on the Delmarva Peninsula, rather than over the route of the Pennsylvania, was that the grain had not come inbound over the Pennsylvania, and therefore was not entitled under its transit tariff to move outbound over that line. This is clearly established by a comparison of complainant's inbound and outbound tonnage over the Pennsylvania. Thus, Exhibit 60 shows that for the years 1938, 1939, and 1940, the Pennsylvania handled for account of complainant at Hagerstown 890 cars inbound [fol. 378] and 1309 cars outbound. Based on the average weights of 66,044 pounds inbound and 49,200 pounds outbound, this movement amounted to 58,775,600 pounds inbound and 64,402,800 pounds outbound. While the excess of the outbound tonnage over the inbound tonnage may be due to the time lag between the inbound and outbound movement of particular shipments, it furnishes convincing evidence that the reason for not shipping out over the Pennsylvania all or part of the 640 cars which moved to Elsmere Junction—equivalent to 31,488,000 pounds—was due to the fact that complainant did not have available the inbound P. R. R. billing which would be necessary to entitle the outbound products to move to Peninsula destinations under the applicable P. R. R. transit tariff.

The second sentence of the quoted paragraph is not pertinent to the issues, but is based upon a misinterpretation of amended Section 15(4). The reason for this will be discussed in a following portion of this petition.



### C. The Report of the Division Is Contrary to Law.

1. The report of the Division proceeds on an erroneous interpretation of amended Section 15(4).

In the first two paragraphs at Sheet 10 of the mimeographed report, the Division discusses the applicability to [fol. 379] the instant situation of Section 15(4) of the Act as amended September 18, 1940. Pertinent portions of the amended statute are quoted at pages 6 and 7 of the Division's report.

The basic error of law which underlies the entire report is the interpretation which the Division places upon clause (b) of Section 15(4) which relieves the Commission from the restriction on its power to prescribe through routes which short-haul a carrier without its consent where "the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation." Thus, the report at sheet 10, states in part:

"We interpret that exception to mean adequate and more efficient and more economic from the public or shippers' as well as the participating carriers' standpoint."

This interpretation is flatly at variance not only with the fair intendment of the words themselves, but also with the history of the legislation.

The meaning of the expressions "more efficient" and "more economic" may first be considered in respect of their ordinary meaning. Reference to Webster's New International Dictionary, Second Edition, Unabridged, as published by G. & C. Merriam Company in 1941, will disclose, among [fol. 380] others, the following definitions of "efficiency" which is the nominal form of the adjective "efficient";

"3. Effective operation as measured by a comparison of actual and possible results; effectiveness as compared with capacity to perform or with cost in energy, time, money, etc.; \* \* \*"

"4. The effective operation of a business, or performance of a business task, with a minimum of waste effort.

. . . . .

“6. *Mech.* The ratio of the energy or work that is obtained from a machine, a storage battery, etc., to the energy put in.”

Referring to the same source for a definition of “economy” which is the nominal form of the adjective “economic,” there is found the following definition:

“3. Thrifty and careful administration; management without loss or waste; as, a housekeeper accustomed to *economy*, but not to parsimony; often, frugality or retrenchment in expenditure; strict husbanding of resources; as, to practice a trying *economy*; also, an economizing act, move, or means; as use of adulterants is a poor *economy*; or, economizing disposition or faculty.

[fol. 381] “6. Prudent and sparing use of means to an end: \* \* \*.”

When the basic meaning of these words is considered in connection with the word “transportation,” there can be no reasonable doubt but that the intention of Congress was to further relax the short-hauling limitation on the Commission’s powers only in such instances as the Commission could find that the additional route to be prescribed was needed to provide adequate transportation and, further, that it would be more efficient or more economic than existing routes in the sense of affording a *less expensive operation*.

The history of this legislation confirms this conclusion. Thus, although the Commission had from time to time recommended the elimination of the short-hauling restriction in its entirety, so that the only restriction on its powers would be the necessity of finding that proposed through routes were “necessary or desirable in the public interest,” the Congress did not adopt that recommendation. The reasons for its decision not to give the Commission such complete power is to be found in the arguments which were advanced before the Senate and House Committees by the railroads that opposed the bills that undertook such complete elimination.

While the amendment to Section 15 (4) was embodied in [fol. 382] the legislation growing out of S. 2009, as intro-

duced in the 76th Congress, no hearings were held with respect thereto in connection with that bill. This was for the reason that similar legislation had been the subject of S. 1085 and H. R. 3400 in the same 76th Congress.

When S. 1085 came on for hearing before a Sub-committee of the Senate Committee on Interstate Commerce, R. S. Outlaw, Esq., appeared for all the main trunk lines in the West, the East, and the South that opposed the bill, which undertook to eliminate the short-hauling restriction. At page 62 of the printed Hearings on that bill Mr. Outlaw in summarizing the objections of the railroads to the legislation stated in part as follows:

“The proponents of these bills are asking that the Commission be given power to prescribe additional through routes where direct, adequate, and satisfactory routes already exist, in spite of the fact that the new routes would not be *more efficient* or more satisfactory routes, would not be of material advantage to the shipping public, but would generally prove *more expensive* and less desirable *to operate*.

“The nature of the proposal is further clarified by noting what it does not seek to accomplish:

. . . . .

[fol. 383] “Fourth. The purpose of the bill is not to promote *economies* with a view to providing the public with adequate transportation service at *lowest cost*.

“The primary objective of the bill is to enable the Commission where its sympathies may be enlisted, to require additional through routes which are longer, *more expensive to operate, or made up of a greater number of railroads than existing through routes*.—

“Clearly, therefore, the proposal is nothing less than a demand for wasteful transportation just at a time when all possible waste should be avoided.” (*Italics inserted*.)

In similar but in more extended fashion, the Hearings which were held before the Subcommittee of the House Committee on Interstate and Foreign Commerce on H. R. 3400, contained conclusive evidence that a particularly vital objection of the railroads to the proposal to omit the short-hauling provision was predicated on the principle that the

Commission ought not to be empowered to prescribe additional through routes unless the same could be shown to be *more efficient or more economical* of operation. Reference to the following excerpts from the printed Hearings will confirm this conclusion, and will also furnish convincing proof of the sense in which the Congress employed the terms "more efficient" and "more economic":

[fol. 384] *Witness Wilcox* (pages 91-92):

"Both of the proposed bills contemplate the elimination from paragraph (4) of the limitations on the powers of the Commission which are therein contained.

"They would remove all restrictions on the power of the Commission to fix any joint through routes which it may consider as being in the public interest *without any definition by the Congress as to what is the public interest* in the premises, and *without laying down any rules for the guidance of the Commission* in determining what joint through routes will be in the public interest. In other words, the passage of either of these bills will result in a complete delegation to the Commission of legislative authority with respect to establishing such joint through routes as may seem to it desirable, without giving an originating carrier or an intermediate carrier any right under any circumstances to retain their long hauls. The Commission would be able to deprive an originating carrier, or an intermediate carrier after coming into possession of the traffic, of their long hauls although their routes may be shorter and the traffic can be handled *more efficiently and economically* than by competitive routes, based on a finding that this is in the public interest although the 'public interest' is not defined and such originating or intermediate carriers may be deprived of revenue which [fol. 385] would be arbitrarily given to their competitors.

"Short-line intermediate and delivering railroads would be permitted to participate in revenue which would accrue to originating and intermediate lines in possession of traffic if short lines are included in joint through routes with such originating and intermediate carriers via short-haul junctions, regardless of the fact that the long haul originating or intermediate carriers

may be shorter and *more efficient and/or economical.*" (Italics inserted.)

Witness Hastings (page 106):

"Thus paragraph (4) of section 15 as now worded affords protection to both the shippers and the carriers and is in the interest of *efficiency of operation.* It is obvious and axiomatic that it is *more economical and efficient* to handle traffic between two points over *one line* in lieu of *two or more different lines*, involving the delays and expense incident to interchange of traffic, where the single line is reasonably direct." (Italics inserted.)

Witness Soergel (pages 118-120):

"The carriers for whom I speak are very much concerned in the results that will ensue if this bill is passed and are very definitely and emphatically opposed to its [fol. 386] passage. Its passage will *increase operating expenses, prevent economical operation,* and entail considerable loss in revenue.

. . . . .

"The establishment of a *joint route* for traffic that a one-line route can handle without undue circuitry is an *economic waste* because joint traffic is *more expensive* to handle than is local traffic and the greater the number of carriers in a joint route, the greater the expense. I think one of the troubles today is that there are too many joint hauls and rather than add to them the trend should be toward curtailment. A single-haul of 500 miles, 1,000 miles, or 1,500 miles requires two terminal services. Add just one other line and four terminal services are necessary. On 3-line hauls we have 6 terminal services, 4-line hauls, 8 terminal services, and 5-line hauls 10 terminal services. *Multiple-line routes are much more expensive* not only because of the extra terminal service, but because of delays to equipment at interchange points, extra accounting for apportionment of revenue, car records and rental.

. . . . .

"Considerable thought is now being given to the consolidation of railroads into a fewer number of systems

with the object in view of *more economical operation*, but what is proposed here is diametrically opposed to that idea, for instead of a concentration of traffic, it is [fol. 387] a dispersion of traffic, scattering it via widely different routes and in reality making *less efficient* the entire plant of the trunk-line carriers." (Italics inserted.)

*Witness Lincoln (page 133):*

"It [this bill] would entail *additional transportation expense by reason of interchanges where more carriers are involved than at present* in forming through routes." (Italics inserted.)

*Witness Wilson (pages 142, 149, 150, 152):*

"The only test would be under section 15, paragraph (3), that the Commission should deem a route necessary or desirable in the public interest and *no consideration would need to be given as to whether the proposed route could be operated as economically as an existing route or routes* or whether the net loss of one carrier which would be short hauled might not be far greater than the net gain of the carrier that was injected into the through route.

• • • • •

"The examples which I have cited will indicate to you clearly that the *cost of operation* over a joint route using a short line as an intermediate line is *greater than via the direct route*, because the distance in most cases is longer, the separate cost of operation on the short line [fol. 388] exceeds the cost of operation on a section of the through line of the same distance, and an additional railroad is injected into the route. Additional interchanges at junction points between carriers become necessary in such through routes, and each *interchange is expensive*, involving station and general office accounting, also switching of cars, and in the case of less-than-carload freight the freight has to be actually unloaded and reloaded at the interchange point.

• • • • •



“ . . . and now they want the law changed so that they may demand from the trunk lines that they be made parties as intermediate carriers to through routes and be allowed a part of the earnings *even though the cost of operation of such joint through routes is greater than the operation via the direct routes over trunk lines*, thereby reducing the net return to the carriers as a whole, which must be made up by the shipping public somewhere else.

. . . . .

“Finally I have endeavored to show the committee—

“First, that the Interstate Commerce Commission should not be clothed with *unlimited authority* to establish joint through routes or to short-haul carriers and that it is not necessary that it be given this authority and that it is *not in the interest of economical railroad operation* or of the public at large.

[fol. 389] “Second, that the short lines have no just claim to be injected into through routes *when the operation of such through route is not in the interest of all the carriers involved from the standpoint of net revenue*.

“Third, that to establish joint through routes for the purpose of *affording transit privileges at points on an intermediate railroad is not in the public interest where the net revenue to the carriers is thereby reduced*.” (Italics inserted.)

Witness Eshelman (pages 176-177):

“Primarily the nature of that limitation is to prevent the establishment of routes which are *uneconomical in operation*.

. . . . .

“We think that the Congress rightfully may lay upon the Commission a limitation where that power if exercised might tend to the establishment of that which is *uneconomical operation*.

. . . . .

“ \* \* \* but what would here be asked would be that Congress permit the Commission to allow an *uneconomic operation, a less economical operation*, \* \* \* ” (Italics inserted.)

The foregoing excerpts from the Hearings before the Senate and House Subcommittees exemplify the objections of the railroads to empowering the Commission to require short-hauling where adequate transportation now exists and [fol. 390] where a more expensive operation would result from the additional route, and explain the purpose of the Congress in relaxing the short-hauling restriction on its powers only where it should be shown that a more efficient and more economic operation would result.

For the foregoing reasons these defendants ask that the first two paragraphs on sheet 10 of the report be stricken and that in lieu thereof a conclusion substantially as follows be substituted:

“In view of the 1940 amendment of Section 15 (4), our power does not extend to the prescription of the proposed routes, which would short-haul the Pennsylvania without its consent, in the absence of a record basis which would permit us to find that the proposed routes are needed in order to provide adequate and more efficient or more economic transportation. This obviously means more efficient or more economic from the standpoint of costs of operation. Complainant has not made any such showing, but on the contrary the defendants have introduced substantial evidence showing that the contrary is the fact.”

2. The ultimate finding of the Division's report is contrary to law.

As its final conclusion the Division, at page 10 of the mimeographed report, makes the following ultimate finding:

[fol. 391] “We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same com-

modities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola Yard near Harrisburg."

For the reasons stated in the foregoing assignments of error the above-quoted conclusions are not supported by the record, but are contrary to the report, and are predicated upon an erroneous interpretation of the applicable statute, and are therefore contrary to law. The quoted finding should be stricken and in its stead the Commission should find substantially as follows:

"The through routes sought have not been shown to be necessary or desirable in the public interest, and there are no facts upon which we could find that they are needed in order to provide adequate and more efficient or more economic transportation. The complaint will be dismissed."

[fol. 392] II. The Order of March 18, 1943, Should be Postponed

The report and order entered herein by the Commission, Division 2, on March 18, 1943, was served by the Commission upon the parties on March 27, 1943. A corrected order dated March 18, 1943, was served on the parties on April 22, 1943. The order requires the defendants therein named to establish the prescribed routes on or before June 28, 1943, by notice to the Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act.

By Section 17 (8) of the Act it is provided that

"Where application for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board is made in accordance with the provisions of this section and the rules and regulations of the Commission, and the decision, order, or requirement has not yet become effective, the decision, order, or requirement shall be stayed or postponed, pending decision of the matter by the Commission or appellate division; but otherwise the making of such an application shall not excuse any person from complying with or obeying the decision,

order, or requirement, or operate to stay or postpone [fol. 393] the enforcement thereof, without the special order of the Commission.

By Rule 101(e) of the Commission's General Rules of Practice petitions for reargument or reconsideration of a decision or order of the character of that here involved must be filed within 60 days after the date of service thereof.

### III. Conclusion

For the reasons hereinabove set forth these defendants respectfully petition the Commission

- (a) For reargument before the entire Commission,
- (b) For reconsideration by the Commission, and for the dismissal of the complaint; and
- (c) For a stay or postponement of said order of March 18, 1943, pending disposition of the matter by the Commission pursuant to the provisions of Section 17(8) of the Act.

Respectfully submitted, (Signed) Francis R. Cross,  
Joseph F. Eshelman, Counsel for Defendants  
except Western Maryland Railway Company.

May 24, 1943.

1740 Broad St., Station Bldg., Philadelphia, Pa.

[fols. 394-398] Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing by first class mail a copy thereof properly addressed to each other party.

Dated at Philadelphia, Pa., this 22nd day of May, 1943.

(Signed) Joseph F. Eshelman, of Counsel.

[fol. 399] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28647

[Title omitted]

REPLY OF COMPLAINANT TO PETITION OF CERTAIN DEFENDANTS  
FOR REARGUMENT AND RECONSIDERATION—Filed June 23, 1943

## Opening Statement

The complainant is engaged in milling and mixing of grain, grain products and grain by-products, and in the manufacture of mixed live stock and poultry feeds, at Hagerstown, Maryland. Complainant draws its raw materials generally from territories of production in the west. After the manufacturing process at Hagerstown, it ships its products to points of consumption east of Hagerstown. The destination points here involved are stations on the Pennsylvania railroad east of York, Pennsylvania, and Fulton Junction (Baltimore), Maryland, and between New York, New York and Cape Charles, Virginia, principally in the region known as the Eastern Shore.

[fol. 400] Under Section 15 (4) of the Interstate Commerce Act as amended, complainant seeks the establishment of through routes at the joint rates now prescribed, and reasonable rules, regulations and practices now applicable to the transportation of grain, grain products and grain by-products from the west to the east.

The two routes prescribed are (1) the well-known and long established "Pittsburg Dispatch Route" from origins on the New York Central and its connections in Central territory, through Hagerstown to the destinations on the Pennsylvania above described; (2) the well-known Wabash Route from origins on that railroad and its connections through Hagerstown to the same points as in route (1).

The joint through rates *now apply* over those routes up to Hagerstown with transit at that point, thence Western Maryland to destinations on the Western Maryland, and from Hagerstown over the Western Maryland to Shippensburg and its connections beyond covering extensive eastern territory described on Sheet 3 of the decision.

The decision of Division 2 of the Commission fully and fairly states the very simple issue above set forth, ade-

quately and correctly summarizes the evidence duly heard, and finds as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola Yard near Harrisburg.

"An appropriate order will be entered."

\*Certain of the defendants have petitioned for reargument and reconsideration, alleging that, (1) The case is one of substantial importance, (2) That the decision of the Division is not supported by the record, and (3) That the decision is contrary to the law.

Under these three headings the petition shows twenty-seven numbered items. Some of these are repetitions, and some seem quite irrelevant to the simple issue presented. We shall undertake to reply to all of them, but shall confine our attention chiefly to those that bear upon the administration of the amended Section 15 (4) to the facts pertaining to the movement of this complainant's traffic, the only traffic here involved.

Complainant requests that the petition for reconsideration be denied for the reasons set forth hereinafter.

[fol. 402]

#### REPLY

The "Existing Rate Structure" Cannot be Disturbed by a Decision That Changes No Rates

The petition starts out with an argument that the Commission should deny relief to this complainant under Section 15 (4) because to do so "might establish a precedent disruptive of the existing structure of rates." (P. 2 of petition.) This type of defense is as old as the Act to Regulate Commerce, and the unfailing answer of the Commission thereto is that it will deal with each complaint as it arises, and upon the facts as presented.



Similar fears were expressed by the defendants in a like case but they never eventuated. As representative, in *Flory Milling Case*, (93 I. C. C. 129) the defendants contended that "to grant the rates and routes suggested" would disturb existing conditions. But the Commission there administered the statute stating that, "an individual shipper is entitled to the reasonable use of existing transportation facilities at reasonable rates on his traffic."

#### The Decision Correctly Administers Section 15 (4) of the Act

The petition next asserts that the Division's decision "emasculates" Section 15 (4), (P. 5, and 77-90, inclusive, of the petition.)

At Sheet 6 (mimeographed) of the decision, the Division quotes the amended section 15 (4); defines the Commission's duty in enforcing it, and applies the law to the facts of this complaint. The decision states with respect to its power to prescribe routes that "provide adequate, and more efficient or more economic transportation" (Sec. 15 (4)) as follows:

"We interpret that exception to mean adequate and more efficient and more economic from the public or shippers' as well as the participating carriers' standpoint."

The argument of the petition (P. 77, *et seq.*) is that Congress was thinking only of the railroads, and that the Division erred in applying the law to the public. In other words, they ask for an interpretation of the new act in the same way as the old act, thus rendering the amendment of no force and effect. In support of their argument they resort to hearings before Committees of Congress. They quote at length from what railroad witnesses told the Committees when considering the amendment.

The fact is that the law is intended to protect both the public and the railroads, and in doing the former, Congress intended to prevent a railroad from arbitrarily forcing the public over its longer and more inefficient route, and requiring the public to pay extra money for this longer and unnecessary service. The foregoing is the sound basis upon which the division administers Section 15 (4) in this case.

The first principle of statutory construction is that it is improper to resort to outside considerations such as hearings before Committees "where the language of a [fol. 404] statute is plain and unambiguous" (59 Corpus Juris 953), as is the language of Section 15 (4). The soundness of the foregoing principle is demonstrated by this petition which offers only the statements of railroad witnesses.

The impropriety of using legislative proceedings to construe a legislative act is stated by the Supreme Court in *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 318. As the court there states,

"Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

Bearing in mind the above principle, the language used by Congress in amending Section 15(4) speaks plainly for itself and supports the application of said amendment to the facts in this case.

The amendment to Section 15 (4) resulted from the request of the Commission itself, duly made under Section 21 of the Act, which requires the Commission's recommendation as to "such additional legislation as the Commission may deem necessary." This amendment was necessary to remove the "inconvenience and hardship" to the public referred to by the Supreme Court in *U. S. v. Missouri Pac. R. Co.*, 278 U. S. 269, where this very Hagerstown route is cited by that Court. (P. 282.)

[fol. 405] The Decision of the Division is supported by the Facts of Record

Beginning on page 7 of the petition and running to page 77 thereof there are twenty-two alleged errors of fact enumerated. In our reply we shall not allow ourselves to be by-passed into patently extraneous and non-essential subjects. We say this in all fairness to opposing counsel who doubtless are desirous of raising in good faith the points that seem to them important. In the interest of complainant, however, we must deal chiefly with subjects that bear directly upon the application of a plainly worded

statute to the simple issue presented in the complaint, namely, complainant's right under Section 15 (4) to be placed upon two regularly established and long existing through routes, at the existing rates.

An examination of their twenty two alleged errors shows that what petitioners call errors are not errors of fact, but are points upon which counsel disagree with the Division and feel that in the exercise of its discretion upon the facts of record, the Division should have found some way to set Section 15 (4) aside in this case. That in doing so, the Division should have accepted the evidence of the Pennsylvania and ignored the evidence of complainant.

(The numbered paragraphs herein conform to the numbers in the petition.)

The Petition (their No. 1, page 7) asserts that a number of carriers (except the Western Maryland) are opposed [fol. 406] posing the granting of the routes sought. Theoretically this may be true, but it seems immaterial. The only destination points involved are on the Pennsylvania, and the whole record indicates that the chief opposition comes from that railroad.

The Petition (their No. 2) asserts that the Carloading figures given in the decision are erroneous. The decision fairly recites what both complainant and the Pennsylvania stated as to *average loading*. The complainant referred to its entire tonnage. The Pennsylvania evidence covers only a limited period. The difference is thus explained, and in any event is immaterial.

The Pennsylvania wants the report to mention that it absorbs switching charges at Hagerstown. (Their No. 3.) As such charges are customarily absorbed by many railroads at thousands of points, and as no issue as to such charges is here involved directly or indirectly, the report need not go into such vestigial subjects.

The petition (their No. 4) states that if the *back-haul* charge were eliminated, the basis of the complaint would be removed. Petitioners misapprehend our position. The complaint seeks through, direct economical routes at the going through rates to avoid the delay and inefficiency of the back-haul route, as well as the payment for a back-haul service not wanted by complainant, and not needed by com-

plainant. (Rec. pp. 34, 39, 48, 49.) The report correctly states "Complainant does not assail the reasonableness of the through rates, the out-of-line charge (back-haul), or the transit charge."

[fol. 407] The petition (their No. 5) argues that because the complainant has open to it other routes to other regions on other railroads without back-hauls, that complainant should be satisfied with a back-haul route to the particular destinations on the Pennsylvania named in the complaint. The petition requests a finding that complainant is not entitled to reach the Eastern Shore region without paying back-haul charges to the Pennsylvania, because complainant now has open to it other destinations on other railroads without such charges. In other words, the Pennsylvania says the Commission should absolve it from this complaint because of the virtues of other railroads.

The petition (their No. 6) objects to the statement in the decision that all shippers should be "accorded equal opportunity to reach all available markets." They say that this does not apply in a case of "unfavorable location." The Pennsylvania Route requires an unnecessary out of line back-haul entailing 149 miles that complainant does not need and does not want. All of this "unfavorable location," is confined solely to the Pennsylvania back-haul route. In referring to this wasteful back-haul service, the Commission states in the former report herein:

"The justification for the special charge is the uneconomical character of the shuttle service from and to the through route." (146 I. C. C. 615.)

In referring to back-haul, out-of-line routes, the Commission says:

"They can hardly be called through routes, for the traffic moves in and out of Hagerstown over the same [fol. 408] line, and the joint rate applies only with the addition of a back-haul charge for the out-of-line movement." (146 I. C. C. 614, at 615.)

#### The Comparisons of Hagerstown with Other Locations Are Mere Paper Comparisons

Confronted with the direct result of its arbitrary refusal to join in the direct and efficient routes herein pre-

scribed, petitioners divert attention to regions remote from the locality to which this case is confined (their No. 7, pages 7 to 22). This is no defense to this case. These comparisons are sterile of any showing of similarity of conditions, or even of any movement, and under many decisions of the Commission such comparisons are regarded as mere paper comparisons and therefore valueless as evidence. (14 I. C. C. 376, and many others.) Any movement on these comparisons would be most unlikely, and the comparisons rest upon a misapprehension of the grain and feed movement upon through joint rates shown of record. (Rec. p. 7, *et seq.*)

The competition on grain and feed is so keen that the presence of a back-haul charge frequently precludes a movement. The 4½ cent back-haul charge will often be sufficient to wipe out all profit on feeds. As to the payment of combination of local rates repeatedly referred to in the comparisons offered, such a thing is absurd in this milling business. (Rec. p. 10.) Again, many of the origins mentioned in the petition such as Lancaster and York, Pennsylvania and Circleville, Ohio, and others, reach these destinations on the Eastern Shore on the through joint rates [fol. 409] and nothing more. (Rec. pp. 49, 54-55, 57, 58.) Others of these origins may and probably do have routes over other lines that reach the markets at the through joint rates and nothing more.

#### The Administration of the Law in this Simple Case will not Upset any Rate Structure

The argument in their No. 8 beginning on page 22, is filled with apprehensions and speculations as to breaking down the entire rate structure of this country, from the granting of the simple local relief requested by complainant. We have covered this point hereinbefore.

The argument here is that the administration of the Act resulting in wiping out the unnecessary back-haul service via the Pennsylvania route to stations on the Eastern Shore will result in a complete break-down of the grain adjustment of the eastern half of the nation. The obvious overstatement in this claim speaks for itself. The result of the finding recommended will not cause a ripple. They say it will result in "cross hauling." There can be no more useless cross-hauling than a lengthy back-haul of

149 miles which is so burdensome to the Pennsylvania that it is compelled to enforce a prohibitive back-haul charge therefor.

The petition asserts (their No. 9) that the decision herein is based upon a former decision. The decision of Division 2 follows the usual course. It recites the essential facts offered upon the present record by both sides, and upon those facts rests its decision. The mere reference [fol. 410] to the former decision dealing with the same issue, the same complainant, and the same defendants, can hardly be questioned as appropriate.

#### The Pennsylvania Route is Longer and More Costly Than the Direct Routes Prescribed

The petition (their No. 10, page 29) objects to the finding in the decision that the prescribed routes are more direct and economical than the longer and back-haul route of the Pennsylvania. It attempts to support this claim by asserting that in figuring the Pennsylvania route the *length of the back-haul should be ignored*.

Their argument is that when a shipper is seeking a through route under Section 15 (4), the route he is seeking must be compared with a route upon which he is not located and which passes him by seventy-five miles away. They give no statutory authority for their contention. On the other hand, Section 15 (4) provides that the Commission shall "give reasonable preference to the carrier by railroad which originates the traffic." On the two routes prescribed by the Division, the Pennsylvania originates no traffic. Moreover, said two routes are shorter than the Pennsylvania route via Hagerstown.

The only relevant comparison is between the length of the existing route *serving the shipper*, namely, the Pennsylvania route through Hagerstown, entailing the cross-hauling, multiple handling, duplicated expensive terminal switching necessarily incurred in stopping a movement for back-hauling, "with another practicable route which could [fol. 411] otherwise be established," (Sec. 15 (4)), namely, the two direct and shorter routes prescribed. The petition rests upon a misapprehension of the clear wording of the statute.

Again on pages 42-43 the petition repeats the above point, arguing that the Amended Section 15 (4) "contem-



*plates*" a comparison of the prescribed routes with the direct route of the Pennsylvania which does not come within seventy-five miles of complainant at Hagerstown. Where does the act contemplate any such thing?

The petition (their No. 11, p. 33) is in error where it states that the decision "evades" a finding as to "public interest." The Division decides what is public interest (Sheet 6) and cites three decisions, including one from the Supreme Court, which the Division follows in this case. The petition therefore rests upon a misconception of what the decision of the Division actually does contain.

On pages 35-37 (their Nos. 12, 13) of the petition the above subject is pursued to no purpose in view of what we have said just above. When anyone in this day and age attempts to argue before a public tribunal that "public interest," used by Congress in the exercise of its legislative powers, includes himself and excludes someone else (or excludes anyone), as does this petition, we decline to pursue the matter further.

[fol. 412] The Enforcement of Section 15 (4) is not Dependent Upon the Consent of a Railroad to be Short Hauled

The petition argues (pp. 37-42, their No. 14) that the Commission cannot enforce Section 15 (4) unless the railroad has "*consented to be shore-hauled.*" (Italics theirs.) This needs no reply. The two routes prescribed are established and are of long standing, and traffic for years has passed over them and is still passing over them to a wide range of destinations in the East. The exception is the arbitrary refusal of the Pennsylvania to join in on traffic to its local stations in the Eastern Shore region. The amendment to Section 15 (4) was enacted for the very purpose of giving the Commission power to correct such arbitrary action on the part of a railroad, when it refused its consent to participate in a route found necessary by the Commission. As the Supreme Court said (*infra*) the amendment was enacted to remove the "inconvenience and hardship" to the public.

Their No. 15 is the same as their No. 10, already answered.

## The Petitioners Seek to Force the Acceptance of their Testimony and "Disallowance" of Ours

The petition (pages 44-62 inclusive, their Nos. 16, 17, 18, 19) objects to the treatment of the evidence offered by both sides as to the relative economy and speed of operation over the back-haul round-about route of the Pennsylvania, and the two efficient shorter direct routes prescribed by the Division. In short, petitioners want the Commission [fol. 413] sion to "disallow" complainant's evidence entirely and accept only that of the Pennsylvania's witness.

The Act to Regulate Commerce requires that a full hearing be given both sides, and upon a record so made the Commission *in its discretion* applies the statute to the facts. The Commission cannot be foreclosed from its duty to weigh the evidence in its own judgment. Petitioners want the Commission to "disallow complainant's comparisons." (P. 44) The Commission does not disallow evidence, it considers it, as was done in this case. The petition demands that the Commission "make proper findings." (P. 56) The Division has made proper findings in its discretion upon the whole record before it.

At the middle of page 54 of their petition, they state the schedule of cars from Hagerstown to Salisbury via Enola should be  $31\frac{1}{2}$  hours or  $24\frac{3}{4}$  hours on two different trains, while the fact is, according to our testimony, that they always took three days or more from Hagerstown, not counting one day lost in switching. Then they admit on the same page that via Western Maryland, Fulton Junction to Salisbury, the time should be  $33\frac{3}{4}$  hours, or very little difference. Again on page 55, they state that the requested route would take a day longer to reach Milford, New Jersey, than via the Pennsylvania direct, but they omit the fact that one day is lost in switching to the Pennsylvania.

In support of their argument, the petition recites again the testimony offered by the Pennsylvania witness. But there was adverse testimony from the complainant that the Commission also considered. As an example, attention [fol. 414] is invited to the following evidence adverse to petitioner's contentions.

The average time of a car from Harrisburg via the Pennsylvania through Hagerstown to the eastern shore is three to four days, depending on whether it is on the main line of the Pennsylvania or not. When a car

leaves Hagerstown via Western Maryland for Elsmere, it leaves Hagerstown late in the morning and is at Elsmere the next morning. That is the actual movement. (Rec. 65.)

Exam. Berry: (To witness Thornton of the Pennsylvania.) Do you think it is more economical and more efficient for you to haul 148 miles out of line than it would be to join in the rate and take it on the direct route?

*Witness Thornton: I do, because we get 4½ cents a hundred pounds for that 149-mile haul. (Italics supplied.)* (Rec. 211.)

Exam. Berry: You are not considering the shipper, then, from an economic standpoint. You are only considering the carrier's interest.

The Witness: Well, I don't know, Mr. Examiner. (Rec. 212.)

In referring to this wasteful back-haul service, the Commission states in the former report herein:

"The justification for the special charge is the uneconomical character of the shuttle service from and to the through route." (146 I. C. C. 615.)

In referring to back-haul, out-of-line routes, the Commission says:

"They can hardly be called through routes, for the traffic moves in and out of Hagerstown over the same [fol. 415] line, and the joint rate applies only with the addition of a back-haul charge for the out-of-line movement." (146 I. C. C. 614, at 615.)

Division 2 recites a general summary of the evidence from both sides. It then in its statutory discretion exercises its power set forth in Section 15 (3) as follows:

"The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes."

#### Average System Costs Do Not Show the Actual Cost of Handling One Commodity

The petition (Page 29 and also their No. 20, Pages 62 to 77) states as follows: "The report errs in mistreating

and disallowing the evidence of relative costs of transportation over the existing and proposed routes." Our reply to their claims respecting this evidence will be found on pages 31-33 inclusive of our brief and on pages 16-18 of our reply to exceptions to which we refer. The Division carefully considers this evidence (Sheet 9) and definitely shows its lack of value in this case. This evidence is a comparison based on the average system costs of handling all traffic over the three routes here involved. Of course, in obtaining an average system cost the prime factor is the total amount of tonnage on all kinds handled by each railroad. Necessarily when one railroad handles a preponderantly greater tonnage, as is true of the Pennsylvania, the railroad handling the greatest volume produces the lowest [fol. 416] average system cost, and in this case it works out in favor of the Pennsylvania.

"The cost per ton of handling varies inversely, in a marked degree, with the volume transported." (78 I. C. C. 611.)

We wonder if these other railroads, such as the New York Central, the Wabash and others, know what they are getting into if they are really accepting the theory of these alleged costs, which we doubt. Followed to its logical end, it simply means that these other railroads should go out of business because the average system cost *thus used* show them to be uneconomical, inefficient or poorly managed.

Moreover, when it comes to using average system costs, the average system costs on all traffic are made up of many hundreds of different commodities moving in different kinds of equipment, some of it very costly (ours moves in box cars); some of it loading up to 100,000 pounds per car while others load but a small fraction of that amount (ours loading above the average); some of it moving long distances and others but a few miles (ours moving from the grain fields of the west to the seaboard); some of it requiring special and costly service, while others require but a minimum (ours requires a minimum of service); some of it entailing material loss and damage claims while others have practically none (the record shows ours are practically zero); some of it seasonal, while others move regularly throughout the year (ours moving day in and

day out); and many other such items not necessary to enumerate. This attempted application of average system costs on all traffic to a single commodity therefore cannot [fol. 417] be done with the hope of obtaining a worth-while comparison.

This whole argument is based upon a very narrow use of the wording of Section 15 (4). That section requires other considerations such as adequate transportation in the public interest, and this complainant shows the effect of inadequacy of the Pennsylvania route in his business as follows:

"This poor rail service forces us to maintain a trucking service in Delaware and ship via Western Maryland and Reading to Elsmere Junction near Wilmington, Del., and truck to consumer, thus making direct delivery in far less time than is now required under the tariffs for all-rail back haul movement." (Rec. p. 34.)

The above factors prove the truth of the statement of the Commission in 112 I. C. C. 347 that it is difficult, if not impossible, to ascertain "the cost of transporting a particular kind of traffic for a certain distance."

And again, in 30 I. C. C. 597:

"The difficulty is appreciated if even fairly approximating the cost of transporting a unit of freight. Any method employed must necessarily be somewhat arbitrary."

With the foregoing ever-present frailties of cost studies in mind, the attempted application of such evidence to a particular situation as here presented is shown to be honey-combed with inconsistencies. Applying an average cost, itself the result of arbitrary formulas and averages on a vast railroad system, to a comparatively insignificant operation as is here attempted, the result is not even a "mere approximation" of anything.

"Cost studies based upon the average cost of handling all traffic cannot be accepted as showing cost of tonnage of a particular commodity or class of commodities." (129 I. C. C. 25.)

Again, when an attempt is made, as here, to compare average costs of one railroad with the average costs of another railroad, when there is no showing of substantially similar circumstances and conditions of terrain served or commodities handled, volume of traffic, efficiency of managements, or many other really controlling factors, the use of such any attempted comparisons to defeat the administration of Section 15(4) seems inartificial. And that is the basis of the cost evidence offered herein.

#### There Is No Attack on the 4½ Cent Back-haul Charge

The Petition (their No. 21, page 73) states that the reference in the decision to the added back-haul charge of 4½ cents necessitated by the greater service over the Pennsylvania route is "confusing." The petition incorrectly assumes that the decision is referring to the amount or reasonableness of the charge. The statement in the decision referred to is as follows:

"Yet the Pennsylvania while contending that from the standpoint of operating conditions and operating costs its routes via Enola Yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 per cent of the prescribed [fol. 419] rate from Chicago to Salisbury, in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not."

The decision is not discussing the reasonableness of this charge. There is no issue as to this charge present anywhere in the Complaint or in our testimony. The reference thereto in the decision is merely to show that the Pennsylvania itself regards its route as so much more costly than the direct routes that it justifies a 17 per cent higher charge than prevails over the direct routes prescribed by the Division. The objection is therefore based upon a misapprehension of the reference to the back-haul charge.



**The Movement of 640 Carloads of Feed by Truck Was Forced by the Uneconomical and Inefficient Pennsylvania Route.**

The decision states:

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Delmarva Peninsula."

The petition (their No. 22, page 75) asserts that the truck movement was due to a shortage of transit balance. The evidence is that it was due to "poor rail service" and in order to make "direct delivery in far less time" than is [fol. 420] required by the lengthy and inefficient round-about back-haul route via the Pennsylvania.

"This poor rail service (on the Pennsylvania route) forces us to maintain a trucking service in Delaware and ship via Western Maryland and Reading to Elsmere Junction near Wilmington, Del., and truck to consumer, thus making direct delivery in far less time than is now required under the tariffs for all-rail back-haul movement." (Rec. p. 34.)

The reference to the figures of inbound and outbound tonnage on the Pennsylvania are beside the point. The movement via Elsmere Junction is over the rails of the Western Maryland and Reading. There was always a surplus transit balance of Pennsylvania tonnage if and when it was desired to move cars via the Pennsylvania. The figures used at top of page 77 of the petition cover three years while our figure of 640 cars cover one year. Evidence of their figures being wrong is that they show more outbound than inbound tonnage, which is impossible according to transit rules. The petition rests upon a misapprehension of these essential facts of record.

• Their No. C, 1, 2, pages 77-90, dealing with the amended Section 15 (4) is answered in the early pages of this reply.

[fol. 421]

## Conclusion

The principle that the public charters these great railroads to serve the public seems to be reversed in this petition. This great interstate carrier (Pennsylvania) is here insisting that this complainant shall be forced away from the railroads forming a shorter through route direct through Hagerstown and be compelled to use the back-haul route of the Pennsylvania, which is actually so uneconomical of operation that the railroad is compelled to demand 17 per cent more to cover its unwanted, unnecessary and expensive service, than is charged by the direct efficient routes prescribed by Division 2.

The theory contended for in the petition may have prevailed prior to the amendment of Section 15(4) but it can hardly be seriously considered today.

As stated by the Supreme Court in *U. S. v. Mo. Pac. Ry.*, 278 U. S. 269:

"Inconvenience or hardships, if any, that result from following the statute as written must be relieved by legislation. It is for Congress to determine whether the Commission should have more authority in respect of the establishment of through routes."

Following out the court's decision, the Commission, acting under Section 21 of the act which authorizes the Commission to recommend "such additional legislation as the Commission may deem necessary," recommended the amendment to Section 15 (4) to remove the "inconvenience and hardship" to the public referred to by the Supreme Court.

[fol. 422-424] The decision of Division 2 herein is a faithful administration of the amendment to Section 15 (4). The complainant respectfully requests that the petition herein be denied.

Respectfully submitted, (Signed) C. R. Hillyer, Attorney for Complainant, Field Building, Chicago, Illinois.

Dated at Chicago, June 23, 1943.

## Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceed-

ing by mailing a copy thereof properly addressed to each party. Dated at Chicago, Illinois, this 21st day of June, 1943.

(Signed) C. R. Hillyer.

[fol. 425-428] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 28647

[Title omitted]

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of October, A. D. 1943.

ORDER DENYING PETITION FOR REARGUMENT AND RECONSIDERATION—October 4, 1943

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of defendants for reargument and reconsideration:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

W. P. Bartel, Secretary.

[fol. 429] BEFORE THE INTERSTATE COMMERCE COMMISSION  
Docket No. 28647

D. A. STICKELL & SONS, INC., Complainant,

v.

THE ALTON RAILROAD COMPANY, et al., Defendants

STENOGRAPHER'S MINUTES OF HEARING—September 10, 1941

[fol. 430] Hearing Room "C," I. C. C. Building

Washington, D. C., September 10, 1941.

Met, pursuant to notice, at 10 o'clock, a. m.

Before: C. W. Berry, Examiner.

APPEARANCES:

C. R. Hillyer, Field Building, Chicago, Ill., appearing for the complainant.

Francis R. Cross, B. & O. Building, Baltimore, Md., and

Joseph F. Eshelman, Broad Street Station Building, Philadelphia, Pa., appearing for the Defendants other than the Western Maryland Railway.

R. V. Craig, 3400 Board of Trade, Chicago, Ill., appearing for Allied Mills, Inc.

[fol. 431-434]

PROCEEDINGS

Exam. Berry: The Commission has set for hearing at this time and place Docket 28647, entitled "D. A. Stickel & Sons, Inc., v. The Alton Railroad Company, et al."

Who appears for the complainant in the case?

Mr. Hillyer: C. R. Hillyer, Field Building, Chicago, Ill.

Exam. Berry: Who appears for the defendants?

Mr. Eshelman: Francis R. Cross, B. & O. Building, Baltimore, Md., and Joseph F. Eshelman, Broad Street Station Building, Philadelphia, Pa., except the Western Maryland. We appear for all defendants except the Western Maryland.

Exam. Berry: Is there anyone here representing the Western Maryland?

I presume a free copy of this record is to go to Mr. Hillyer for the complainant, and who for the defendants?

Mr. Eshelman: Well, you may send it to me. We will cooperate.

Exam. Berry: Mr. Eshelman. All right.

By complaint filed April 9, 1941, it is alleged that the complainant is denied reasonable through routes and joint rates on grain, grain products, and grain by-products from origins in Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, Omaha, Nebr., and Missouri, milled and mixed into flour, livestock and poultry food, at Hagerstown, Md., and [fol. 435] the manufactured products reshipped to destinations in New England and Trunk Line territory.

The Commission is requested to prescribe reasonable and non-prejudicial through routes and joint rates via Hagerstown, and a reasonable transit arrangement to Hagerstown.

Is that correct?

Mr. Hillyer: I think that correctly states the issue; yes, sir.

Exam. Berry: Is that your understanding, gentlemen?

Mr. Cross: Yes, sir.

Mr. Eshelman: I think the charge is that the existing routes are unreasonable. It is my understanding.

Exam. Berry: I did not so read the complaint.

Well, I will say it this way, that as I read the complaint the allegation is not that the present routes are unreasonable but that Hagerstown—the complainant at Hagerstown is denied reasonable and non-prejudicial routes via that point.

Mr. Eshelman: Well, I just wanted to make the point that the charge, so far as the pleading is drawn, relates to charges of violation of section 5, but there is the reference to non-prejudicial routes only in the prayer.

Exam. Berry: That is true.

Are you ready to proceed, Mr. Hillyer?

Mr. Hillyer: Yes, sir.

I will ask that Mr. Fulde be sworn.

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[fol. 436] J. C. FULDE, being first duly sworn, testified as follows:

Direct examination.

Mr. Hillyer: This witness' name is J. C. Fulde.

By Mr. Hillyer:

Q. Mr. Fulde, where do you now reside and what is your present occupation?

A. I have been associated with D. A. Stickell & Sons, Inc., since January, 1924. My official title is that of vice-president. I have supervision of the purchase of the raw materials and the sale and distribution of our manufactured feeds.

Q. Mr. Fulde, what has been your experience that qualifies you to testify as a witness in this case.

A. Before joining D. A. Stickell & Sons, Inc., I was associated with the Quaker Oats Company 21 years, and the American Hominy Company one year. During all these years I have been associated with the manufacture and distribution of manufactured feeds. I have seen this industry grow from scratch to one of the important industries of the country and one that is the source of much revenue to the railroads of the country.

Q. You gave your qualifications, did you?

A. Yes.

Q. Now, what business has the complainant engaged in?

A. We are engaged in milling and mixing grains, grain products, and grain by-products into mixed livestock and poultry feeds at our plant at Hagerstown, Md.

[fol. 437] By Mr. Cross:

Q. Also flour; isn't that right? I understood the Examiner to state.

Exam. Berry: I did so state, but I am not sure whether the complaint contained that or not. I stated that in the reading of the issues, that you milled flour there.

By Mr. Hillyer:

Q. I think flour goes out; doesn't it?

A. Our flour mill was destroyed some years ago by fire, and we haven't rebuilt that part.

Exam. Berry: All right, I am glad to have that cleared up.

By Mr. Hillyer:

Q. Now, Mr. Fulde, will you describe the development of the mixed feed business?

A. The manufactured feed industry has done much to improve conditions of both the farmers and the city workers. Through its scientifically blended feeds it has enabled the farmers to increase their production of eggs, poultry, milk, butter, meat, fat, et cetera, and it has made these products available to the city dwellers in a constantly increasing manner.

In the past 25 years much has been learned about the nutritional requirements of poultry, dairy cattle and live stock. The feed manufacturer has incorporated these important findings in the feeds that he manufactures. Years ago when little was known about the actual feed requirements of poultry and livestock the farmer fed largely the grains that he raised and bought very little in the way of feeding [fol. 438] stuffs. Today an average ration for poultry, dairy cattle, hogs and other live stock will contain about fourteen and even more ingredients. This means that the feed manufacturer must assemble this wide variety of materials and blend them into the various manufactured feeds. He must draw upon all sections of the country for these many different materials.

These materials are varied. Soybean oil meal, though a comparatively new product, is used by us in a very large



way, namely, about 9,000 tons yearly. It is a by-product resulting from the extraction of oil from soya beans. This product is secured principally from plants in Ohio, Indiana, and Illinois.

Gluten feed and gluten meal, of which we use about 9,000 tons yearly, is a by-product resulting from the manufacture of corn starch and corn syrup. These are secured principally from plants located in Illinois, Indiana, and Iowa.

Wheat bran and wheat middlings, of which we use about 15,600 tons yearly, are by-products resulting from the manufacture of flour. These we draw principally from Kansas, Missouri, Minnesota, Illinois, Indiana, and Ohio.

Linseed oilmeal, of which we use about 1,000 tons yearly, is a by-product resulting from the extraction of oil from flax seed, comes mostly from Ohio.

Dried skim milk and dried whey, of which we use about 1,500 tons yearly, comes principally from California, Wisconsin, New York, and Pennsylvania.

[fol. 439] Corn, of which we use about 1 $\frac{1}{4}$  million bushels yearly, in addition to being secured from farmers and elevator men in Cumberland Valley, is also secured principally from Ohio, Indiana, Illinois, and Iowa.

Some of the other materials we use in a large way are milo maize and kafir corn, which comes principally from Kansas and Oklahoma.

Dried corn distillers grains, a by-product from the manufacture of whisky, comes principally from Kentucky.

Dried brewers grains, a by-product of the breweries, comes principally from Pennsylvania, Ohio, and Wisconsin.

Cottonseed meal, a by-product resulting from the extraction of oil from cottonseed, comes principally from North Carolina, South Carolina, Georgia and Tennessee.

This is only a partial list of the materials we use and their source of supplies but they indicate the importance of the manufactured feed industry to the railroads and why it is that the railroads should cooperate with the feed manufacturer.

Q. Now, I understand from testimony you have just given that you did it partly for the purpose of contrasting the old conditions when the farmer fed his local grains and products right on his farm, without any transportation charge, and the present mixed feed business, which requires the transportation by rail on a transit practice of vast tonnages of these raw materials, is that true?

[fol. 440] A. Yes.

Q. What are the two principal items entering into the cost of manufactured feeds in the way you have described?

A. The two principal items entering into the cost of manufactured feeds are the raw materials and the freight charges. The margin of profit on a ton of manufactured feeds is very small.

Q. Now, Mr. Fulde, what can you say of the location of Hagerstown as a point for feed manufacture?

Mr. Hillyer: This witness is not a traffic witness. He is a commercial witness. We have another traffic witness.

A. Hagerstown is well located for a plant devoted to the manufacture of feed. It is a gateway to the North and the South. It is served by four railroads, Western Maryland, Pennsylvania, Baltimore & Ohio, and Norfolk & Western.

Q. Would you say that your location is an asset to the farmers of that community?

A. We are performing a service to the farmers of the Cumberland Valley by making a market for their crops of corn, barley, buckwheat, etcetera, and it is of great importance to the maintenance of the economical life of this valley that all handicaps interfering with the operation of a commercial mixed feed plant at Hagerstown be removed.

Q. Now, referring to the markets that are served through [fol. 441] Hagerstown, just give a general description of them, will you?

A. Our potential markets for the distribution of our manufactured feeds are the States of Maryland, Eastern Pennsylvania, Virginia, Delaware, New Jersey, and the New England States. It should be possible for us to reach every point in this territory but because of the lack of proper through routes we are not able to do so.

For instance, we cannot sell the trade in Baltimore who require Pennsylvania Railroad delivery. The same is true of Washington, D. C., and hundreds of points in Maryland, Pennsylvania, New Jersey, Delaware, Virginia, and the New England States.

It is this lack of proper through routes that places us at a great disadvantage compared with our principal competitors, and we might mention as an illustration those located in Lancaster, York, and Pittsburgh, Pa.; Buffalo, N. Y.; Cincinnati, Toledo, Cleveland, and Akron, Ohio;

Fort Wayne and Indianapolis, Ind.; Chicago, Ill.; St. Louis and Kansas City, Mo.; Cedar Rapids and Davenport, Iowa; Minneapolis, Minn.

Exam. Berry: Mr. Hillyer, the routes to Virginia are not in issue here; are they?

Mr. Hillyer: No. He was giving a general picture of his business there.

There is a little tip down on the Eastern Shore of Virginia that is quite important to this man.

[fol. 442] By Mr. Hillyer:

Q. Now, that completes your testimony on direct, doesn't it?

A. Yes.

Mr. Hillyer: You may cross-examine this witness.

Exam. Berry: Mr. Hillyer, do you wish to amend your complaint to include that part of Virginia? I do not think Virginia is mentioned as a destination territory here.

Mr. Hillyer: Is that so?

Exam. Berry: I am not sure.

Mr. Hillyer: Yes, that is very important.

Exam. Berry: No objection to amending the complaint to include it, is there, gentlemen?

Mr. Cross: No, sir. He does not mention Delaware, either.

The Witness: We should include Delaware, Eastern Shore of Maryland.

Mr. Hillyer: I tell you, I think it is covered on top of page 5, Mr. Berry, "Down the Eastern Shore of Maryland to Cape Charles, Va."

Mr. Eshelman: I think that is adequate, Your Honor.

Mr. Hillyer: I know I had it in mind because this man's plant is peculiarly located to serve those people down there, and they are a valuable market to him.

Exam. Berry: As I read it, it simply told where he shipped more as a historical question, but was not mentioned in the destinations; but I understand now it may be understood [fol. 443] that that does specify the destinations in the complaint.

All right.

Mr. Eshelman: You were referring to the Eastern Shore, were you not, Mr. Examiner?

Exam. Berry: The Eastern Shore of Delaware, or any other point that is not mentioned in—I do not see the paragraph I had in mind now.

The Witness: I think it is paragraph 5 you had in mind.

Exam. Berry: Paragraph 5. All right.

Cross-examination.

By Mr. Eshelman:

Q. Do you know, Mr. Fulde, how long the complainant has been in operation at Hagerstown?

A. Mr. Stickell started in, I believe, in the year 1883, if I am not mistaken.

Q. And was he then on the Western Maryland tracks, do you remember?

A. I do not know.

Q. Well, what is the inbound rail tonnage received by the complainant in the course of a year? I refer, of course, to the materials that you employed in your operations? I do not mean coal, for instance.

A. Well, I believe you had better ask that of our traffic man because he may keep a record of all our inbound tonnage.

Q. Is he going to testify?

A. He is going to testify, yes. You may ask him that.

[fol. 444] Q. You do not know approximately what your inbound tonnages by rail would be?

A. The traffic man keeps a record of that because we have a certain amount of farm grains we receive from the farmers and we have parts by rail, and, as I understand, he keeps a record.

Q. He will know how much comes in by rail and how much local receipts?

A. I imagine he will be able to approximately give you that information.

Q. Is that true also of your outbound rail movements and outbound truck movements?

A. Well, I suppose he would be able to give that same answer. The thing that I would know is our total sales. That is what I am interested in. Then when it comes to breaking down into trucking of traffic, of course that is not under my supervision.

Q. Do you have the total sales by tons?

A. I do not have it exactly. I can give it to you approximately. It is approximately 60,000 tons.

Exam. Berry: A year?

The Witness: Yes, sir, about 60,000 tons a year.

By Mr. Eshelman:

Q. That would be the production?

A. That is about the shipments that we make, either by rail or by truck.

[fol. 445] Q. And you do not have the separation of that?

A. No, I do not have that.

Q. And in what territories or sections can you state more specifically does the bulk of that tonnage go?

A. Eastern Pennsylvania, Eastern Shore of Maryland-Delaware, Eastern Shore of Virginia, and we also distribute in New Jersey and New England States.

Q. And is that your chief distribution; for instance, is the South a heavy distributing section for you people?

A. No, sir; not south of Virginia, not below Virginia.

Q. That is, not into the Carolinas?

A. No, sir.

Q. But into Virginia, you get in there pretty well?

A. We get into Virginia, yes.

Q. Do you get into New York State?

A. Very little.

Q. Long Island?

A. Well, we are not doing very much business there at the moment because we haven't opened up that territory, but Long Island would be available for us.

Q. Without backhauling, out of route charge?

A. Well, I could not answer that because that is a traffic question.

Q. About what proportion of your production would you say goes into the Eastern Shore?

[fol. 446] A. I think it would be between 50 to 60 percent.

Q. As I understand your testimony, your inbound raw materials do not consist only of grains but may consist in part of such things as bran, middlings, and other grain products; is that right?

A. Yes, sir; grain by-products. Grain and grain by-products; a good many materials I mentioned like cotton-seed meal are by-products.

Q. And do you receive such products to an important extent from points in Central territory, such as Cleveland or Indianapolis, or places of that sort?

A. It comes from—those products come from Ohio, Indiana, Illinois, Wisconsin, Michigan, Missouri.

Q. And are those products of mills at those points which process grain in its more natural or original form?

A. Mostly the materials we buy, we buy right direct from the mills that process those materials; we buy very little through a broker or second or third person.

Q. Will you say that the principle which complainant here asks to have established is that if its milling point can be situated on any through routes that are reasonably direct that it thinks that it should have the through route established via that milling point in order that it might transit upon it?

A. That is a long question and it—suppose you give that over again, a little more slowly.

[fol. 447] Q. As I understand it, complainant asks that through routes be established from these western points to destination territory where you market your product. Complainant asks that those routes be established through Hagerstown in order that complainant may transit the grain at that point; that is, that you may have an in-and-out movement on a through route; that is correct, isn't it?

A. We are asking these other routes so that we will have a reasonable route upon which there will be no back haul.

Mr. Hillyer: I think, Mr. Eshelman, the next witness will explain those routes to you.

Mr. Eshelman: Yes. It was more the principle that I was interested in here. I did not mean to go into detail with this witness.

Q. In your opinion are you seeking any preferential treatment in this case?

A. Absolutely not.

Q. From your standpoint will you think it proper—if the Commission should grant what you people seek here would you think it proper that other millers and feed mixers throughout the east, we will say, should have similar treatment so far as establishment of routes is concerned?

A. They practically all have that and we are simply seeking what they have.

Q. You think most of the others have that, is that right?



A. Practically all of them, yes.

[fol. 448] Q. What advantages does the feed mixer nearer the point of destination have, if any, as compared with a feed mixer a greater distance, for instance take your situation as against that of Kansas City, do you have any advantage that he does not?

A. We ought to look at this thing from a broad picture. Hagerstown is located in the Cumberland Valley, which is one of the richest grain growing sections of the country. A market should be found for those materials. If there is no mill located in Hagerstown such as ours it would be difficult for the farmers to find a satisfactory market for the grains that they raise.

So that taking a mill at Hagerstown we are not only serving the section where we think is our natural territory economically and satisfactorily, but we are also serving the farmers of the community from which we draw some of our grains.

Now, I might mention there, if you want me to, if you go back to the history of the Cumberland Valley you will find that many years ago they raised principally wheat which was milled into flour. Since the milling business has changed, the flour milling business has changed, there is [fol. 449] less market for the wheat, consequently it has been advisable for the farmers to raise other grains, and that is where we come in by finding a market for those grains which they can raise for which there would be a market.

Q. What are those grains mostly?

A. Those are mostly corn, barley, buckwheat, and we also use some wheat.

Q. Would you say that the more eastern miller has a certain advantage over the western millers in being closer to markets so far as making faster shipments are concerned?

A. Well, I would say yes, because we have such shorter hauls.

Q. Are you familiar with whether generally the western miller might have a narrower origin territory to draw from than the more eastern miller?

A. Naturally he would. He naturally would, because we have all the sections west of us to draw on and he does not.

Q. On the other hand, it might be that your destination

territory would be slightly less broad than his; isn't that true?

A. We have less territory to sell in, but we have a wider territory to draw from.

Q. I think you gave the location of a certain feed mixing companies in the East, but I am not sure. Were there any that you did not mention that you should include?

A. Oh, I don't know. I just simply gave you those as examples, that is all. I did not try to give you the list of [fol. 450] all feed manufacturers, just some of them.

Q. Do you know whether there are any in the Norfolk district?

A. In the what?

Q. In the Norfolk district.

A. I believe the Southern States may have a mill in Norfolk.

Q. Does Allied Mills have a plant somewhere in that section?

A. They may process soy beans, but I am not so sure they have any manufactured feeds. They may process soy beans.

Q. Is there any plant at Wilmington, do you mean?

A. The Purina Mills, I believe, have a plant at Wilmington, Del.

Q. To what extent do these other millers have more than one plant?

A. It varies. Just the other day I read that G. L. F. in Buffalo have decided that they are going to decentralize their business.

The fact that there are communities where grain is raised that should be marketed makes it, I think, an advisable matter to have feed mills located, and some of these larger mills who probably at one time thought of centralizing all their plants in one or two, may begin to decide on a decentralizing idea. I notice that G. L. F. just within a week or so decided that their plan would be to decentralize.

Q. Do you know whether or not Allied Mills has more than one plant in Official territory?

[fol. 451] A. I do not know where all their plants are located. I know their office is in Chicago and their business is varied. I could not tell you that.

Q. You spoke of a manufacturer, I believe at Lancaster. Does that manufacturer have plants at other places, do you know?

A. Yes, sir.

Q. What other points?

A. He has a plant at York, Pa., one at Circleville, Ohio.

Q. Is there any territory available to you as a distribution territory where you have an advantage as compared with other millers?

Exam. Berry: Advantage of what? Rates or what.

Mr. Eshelman: Yes, in distribution.

A. I do not think we have any advantage over anyone.

By Mr. Eshelman:

Q. You do not think you do?

A. I do not think so, no. We might probably within a few miles away of trucking, but—

Exam. Berry: He is speaking in connection with the railroads.

The Witness: Yes.

Exam. Berry: Railroad rates; do you have any advantage in rates?

The Witness: No, we do not. If anything, we have a disadvantage. That is what we are trying to correct.

By Mr. Eshelman:

Q. You think you are the only one that is sinned against? [452] A. Oh, I would not say that.

Q. Is it true, Mr. Fulde, that if these routes were established, which the complaint seeks, that you would put an increased proportion of products into the destination territory?

A. Of course that is hard to say because we cannot anticipate what competitive conditions would be; but it would place us in a better competitive condition.

Q. The advantage, however, that you spoke of to the growers or receivers of grains and feeds in your territory, the advantage which you described to accrue to them would be dependent, would it not, upon the extent to which you did increase your tonnage?

A. As I indicated, we draw not only corn, materials—that is, in other words, our local farmers do not raise enough to take care of us, but if we were eliminated then our local farmers would have the difficulty of finding a good market for their corn, because we are the principal users of the corn in that section.

Q. You do not think that we want to eliminate you, do you?

A. What is that? Well, I do not think—

Q. It is true, however, is it not, that to the extent that your proportion of the final consumption would be increased, that of someone else would be decreased; that follows, [fol. 453] doesn't it?

A. As I told you before, we cannot tell that there is going to be an increase because of competitive conditions.

Q. I understand.

A. Yes. So we just simply have no thought of increase. That has not been the thought at all. We just simply want to eliminate what we think is a disadvantage.

By Mr. Cross:

Q. Mr. Fulde, you explained to Mr. Eshelman that as between you and your western competitors that the western competitors have an advantage in destination territory but the disadvantage in origin territory, whereas you have an advantage in origin territory but a disadvantage in destination territory. That was your explanation to Mr. Eshelman, was it not?

Exam. Berry. I think that was contingent upon whether they got the through routes; after they got the through routes that condition would be true.

Mr. Cross: No.

Mr. Eshelman: That as to the present time.

Exam. Berry: All right. Go ahead.

A. The point was since we are east, the territory east, of course, is much smaller. Take a mill, for instance, in Kansas City. They have a territory from Kansas City to the Atlantic Coast, so they have a wider territory in which to dispose of their products; but a mill in Kansas City would not be able to buy bran or middlings in Ohio. [fol. 454] We would be able to take advantage of that market in buying, but we do not seek to ship our product in Ohio. We are not seeking that.

By Mr. Cross:

Q. So my statement was substantially correct, was it not?

A. Yes, sir.

Q. Is it also true that you have a commercial advantage in that the users of feed like to buy feed that has been freshly made as against feed which has been manufactured at some far western point?

A. No, I would not say that, because any feed that was shipped direct from a mill, no matter where it was located, would be considered fresh feed.

Q. You do not recall testimony in the former hearing to the effect that the consumer prefers to buy freshly made feed from the East as against feed manufactured at these western mixing points?

A. As I said, any feed is fresh that is milled in Kansas City or Chicago, and, freshly milled, it would be considered a fresh feed. Feed that would probably have laid in a warehouse, they might have some objections to that.

Q. You do not recall testimony to the effect as I stated, do you?

A. I do not recall that.

Q. Now, let us confine ourselves to your competitors in [fol. 455] the East, and you named competitors at Lancaster and York.

Now, you say that those millers have precisely what you are seeking.

A. I understand that.

Q. Will you go further than that and say that you are not seeking anything which other millers do not have?

A. We are not seeking any advantage over anyone.

Q. Then, I understand that you are answering my question as "yes."

A. Well, yes. The way I understood your question would be to indicate that we might seek an advantage, but we are not seeking an advantage.

Q. No.

Exam. Berry: No. The question is this, if you are mistaken as to what privileges and rights they have, are you then seeking any more than they are asking for? If they have not got it, you do not want it?

The Witness: We are not asking for it, no.

Exam. Berry: Is that true if some of them have it and some do not, you are not asking for it, or you are asking for it?

The Witness: The mills that were mentioned there, we are just simply asking for the same thing that they have.

Exam. Berry: All right.

By Mr. Cross:

Q. That is what I understood you to say, that you are [fol. 456] asking for what the other millers in the Eastern territory have, and you named as representative competitors Lancaster and York.

Now, will you state to me a single competitor of yours who is similarly situated as you are who has what you are asking for?

A. Well, I—that would be a traffic question. I would not be able to answer that.

Q. Well, I thought that you had covered it in your broad statement.

Now, let us take this miller at York who is a competitor of yours. Now, he has, you say, transit on shipments destined to points on the Western Maryland, Delmar, Md., or Western Maryland?

A. I could not tell you that because you are beginning to ask me transit questions; I could not tell you that.

Q. You said you are not asking for what the others did not have.

A. You brought in Western Maryland. We are asking routes that will eliminate the back haul that we have on the Pennsylvania Railroad.

Q. But are you not at present treated precisely the same as other millers who are situated on a single line of railroad, in that you have transit to destinations at the flat rate to destinations on the railroads on which you are situated, [fol. 457] where your competitors have transit at the flat rate only to destinations on the railroad on which they are situated?

A. What I know is this, that those, if they are located on the Pennsylvania at Lancaster or York they do not have the disadvantage that we do.

Exam. Berry: To destinations on the Pennsylvania.

The Witness: Yes.



Exam. Berry: But how about destinations on other carriers?

By Mr. Cross:

Q. To destinations on Western Maryland, they have a disadvantage which you haven't got; haven't they?

A. Well, that is a traffic question, because I would not know, for instance, what arrangements they have at Lancaster for their shipments to points on Western Maryland. See, the Western Maryland, I do not believe goes to Lancaster.

Q. No. As I understand it, both Lancaster and York, the miller is on the Pennsylvania and he has a disadvantage in that he cannot have transit at the flat rate to destinations on the Western Maryland.

A. That is because he is too far east, then, for those points.

Q. He is no farther east than you are, is he?

A. But he is east, as I understand it, he is east of the eastern termini of the Western Maryland Railroad.

Q. Well, is it not a fact that you are asking for the extension to your company of a principle which does not apply [fol. 458] at any of your competitors' eastern territory?

A. Well, that is a question I do not believe I would be qualified to answer.

Mr. Cross: Thank you very much.

By Mr. Cross:

Q. Now, just one question about this corn from points in the Cumberland Valley.

Is it my understanding that you would move that corn into Hagerstown by railroad and mill it into feed, and then ship it out to some of the destinations that you have in mind, and in the outbound movement you would apply your inbound corn against the billing?

A. Most of the corn that we receive at Hagerstown is trucked in to us, and we apply that trucking tonnage against what is trucked out.

Q. So this corn has nothing to do with your railroad movement?

A. We could, if there was enough received—in other words, if the inbound tonnage of corn from the farmers was so large that it exceeded what we would truck out, then we would ship that on a local rate of freight.

Q. You are not seeking rates from these Cumberland Valley points, are you?

A. No, no.

Mr. Cross: I have nothing further. Thank you.

Exam. Berry: Mr. Fulde, this Lancaster and York—have you transit at the grain rates on soy bean meal, linseed oil [fol. 459] meal, I believe you describe it, dry skimmed milk, cottonseed meal when mixed with grain products?

A. There would be only those two meals, excepting dried skim milk and dried wheys. I understand that those two products do not carry milling-in-transit privilege, but we are permitted to include a certain amount in our feeds.

Exam. Berry: But the milling-in-transit privilege does include cottonseed meal?

The Witness: Yes.

Exam. Berry: And soy beans, distillers' grains.

The Witness: Yes, sir.

Exam. Berry: Brewers' grains?

The Witness: Yes, sir.

Exam. Berry: And they move out at the grain product rate?

The Witness: Yes, sir. Whatever the milling-in-transit rate is.

Exam. Berry: All right. That is all I have.

Mr. Craig: Mr. Examiner, unfortunately I was delayed at the beginning. My name is Craig, of Allied Mills. I have an intervening petition I would like to file at this time.

Exam. Berry: You may distribute the others.

Mr. Craig, are you intervening in support or opposition to the complaint?

Mr. Craig: I am intervening, Mr. Examiner, to protect the Allied Mills' interest as that may appear here. I am not [fol. 460] supporting either complainant or defendants.

Exam. Berry: Do you want to participate in cross-examination?

Mr. Craig: Yes, sir.

Exam. Berry: Then you will have to state your position. You cannot cross-examine first on one side and then the other.

Mr. Craig: Of course, Mr. Examiner, I have heard that discussed before.

Exam. Berry: Well, that is my ruling now. You will have to either state your position or you will not be permitted to

cross-examine. If you later on feel that you can state your position, and then want to participate, all right, but we must know what your interests are here to know to what extent you participate.

Mr. Craig: Mr. Examiner, my interest is this, that I have a feed plant, regardless of what Mr. Fulde said, at Portsmouth, Va., and we would like to have through rates from points in the West via Portsmouth, Va., to the Eastern Shore. As an illustration, the Pennsylvania Railroad points on the Eastern Shore. Mr. Fulde, the complainant here, is attempting to obtain through rates from Hagerstown, Md., to points on the Eastern Shore specifically. Obviously, I have an interest, or my company has an interest in the proceeding. We want the same things that the complainant wants, but I do not see how I could possibly inter-[fol. 461] vene in behalf of the complainant in the case, and certainly I am not intervening in behalf of complainant. I am here to protect Allied Mills' interest.

Mr. Eshelman: It looks like he is against the both of us.

Exam. Berry: Let's see if I can yet your position clear.

You are here to prevent any undue preference or prejudice against you; is that right?

Mr. Craig: Yes, sir; that is correct.

Exam. Berry: And then you are only appearing in so far as your interest may be unduly prejudiced.

Mr. Craig: That is correct.

Exam. Berry: Then, you may be permitted to participate to that extent.

Mr. Eshelman: May I also suggest, if the complainant gets the door open he wants to go through it.

Mr. Craig: If I do, I assure you I will file a formal record.

Exam. Berry: All right, Mr. Hillyer.

Mr. Hillyer: That is all with this witness.

(Witness excused.)

Exam. Berry: I do not know, gentlemen, whether I made a formal ruling or not, but this petition for intervention is permitted, and Mr. Craig will be known as appearing for the Allied Mills.

Mr. Hillyer: I will call Mr. Stickell.

[fol. 462] H. K. STICKELL, being first duly sworn, testified as follows:

Direct examination.

Mr. Hillyer: This witness' name is H. K. Stickell.

By Mr. Hillyer:

Q. Mr. Stickell, where are you employed and how are you employed?

A. I am located at Hagerstown, Md., and have been with the complainant since 1903 and handle all traffic matters along with certain other duties connected with this business.

Q. Describe the transportation characteristics of the commodities here involved.

A. The commodities handled in the milling and mixing of grain and feeds load heavily into the plant; grain as a rule to the marked capacity of the car and feed for mixing averaging 30 tons a car. The loss and damage claims in our business are negligible, amounting to practically nothing. All outbound products are loaded in the same cars from which grain or feed have been unloaded, resulting in the greatest economy to the carriers.

Q. Now, please describe the location of Hagerstown from a transportation standpoint.

A. The situation of Hagerstown, located in the East, has the advantage to the railroads of using heavily loaded cars from Central territory and farther west to Hagerstown, Md., while on the outbound movement to our customers the haul is relatively short, averaging 200 miles. We load whatever the customer orders, which averages about 23 tons per car outbound. Corn, which comes principally from Illinois and Iowa, arrives at Hagerstown in 42 to 50-ton cars, thus making one car do the work that two cars would do on a long haul of feed from the western manufacturer to his customer.

From the western mills, the situation is reversed. The short haul is on the heavier loading grain, and the long haul to the eastern markets is on the lighter carloads of feed.

Q. Mr. Stickell, will you describe the location of the plant in Hagerstown?

A. Our plant is located on the main line of the W. M. Railroad and the service required is very simple and inexpensive. The switch movement from the Pennsylvania Railroad is about one-mile distant. See Exhibit No. 1.

Exam. Berry: Remember, none of these exhibits have been identified or offered for evidence.

Mr. Hillyer: Excuse me. I will offer these five copies now for identification, please.

Exam. Berry: And have the witness describe them as he takes them up.

Mr. Hillyer: Yes.

Exam. Berry: All right. Just describe your exhibit instead of referring to it by number.

Mr. Hillyer: I will tell you, he has his testimony pre-[fol. 464] pared so he will describe them as the exhibit fits into his testimony.

(Exhibit No. 1, Witness Stickell, marked for identification.)

By Mr. Hillyer:

Q. Now, you are going to take up Exhibit 2 and describe the movement when the traffic comes into Hagerstown over the Pennsylvania Railroad and goes out.

(Exhibit No. 2, Witness Stickell, marked for identification.)

A. Well, Exhibit 2 shows a map, showing the Pennsylvania Railroad movement from Pittsburgh, which is a representative point, through Hagerstown to the Eastern Shore. Is that sufficient?

Exam. Berry: That is marked at the bottom "Route with back haul to Hagerstown, Md."

The Witness: Yes.

Exam. Berry: All right.

The Witness: It shows on there Pennsylvania.

In order to make delivery to customers located on the Pennsylvania Railroad under the present tariffs, we must get tonnage from Central territory or Buffalo territory moving Pennsylvania Railroad to Harrisburg, Pa., then via Cumberland Valley Branch of the Pennsylvania Railroad 73 miles to Hagerstown, where it is mixed in transit, hauled 73 miles back to Harrisburg, Pa., and Pennsylvania [fol. 465] Railroad to its destination. Ninety percent of our Pennsylvania Railroad tonnage goes to the Eastern Shore of Maryland, Virginia, and the State of Delaware.

Q. Now, does the movement just described slow down the operation?

A. Yes. This back-haul movement slows down the delivery time three or four days, making considerable extra and unnecessary hauling, and costs us 90 cents per ton back-hauling charges, while our competitors can reach any destination in the East on the Pennsylvania Railroad at regular through rates or 90 cents per ton less than we can.

Mr. Cross: Just a moment. I think that the Allied Mills just stated to the contrary, didn't they? I understood the statement of the representative of the Allied Mills was that he could not reach the Eastern Shore, either, from Portsmouth.

Exam. Berry: Well, we can take that up.

Go ahead. I do not know whether that is correct or not because he was not under oath and was not testifying.

Mr. Hillyer: All right.

By Mr. Hillyer:

Q. Go on.

A. Cars for Eastern Shore of Maryland and Virginia and Delaware, via Pennsylvania Railroad, take three or four days to reach destination. This poor rail service forces us to maintain a trucking service in Delaware and ship via West and Reading to Elsmere Junction near [fol. 466] Wilmington, Del., and truck to consumer, thus making direct delivery in far less time than is now required under the tariffs for all-rail movement.

Q. How much tonnage moved over this rail and truck route in 1940? And how much moved all the way over the Pennsylvania Railroad and paid the back haul?

A. In 1940 we shipped 640 cars of feed out of Hagerstown via the Western Maryland to Shippensburg, Pa., thence via the Reading to Elsmere Junction, Del.; thence via truck to consumers on the Eastern Shore of Maryland, Virginia, and Delaware.

During the same year, we shipped 675 cars via the Pennsylvania Railroad to destinations on the Pennsylvania Railroad, on which the back haul charge between Hagerstown and Harrisburg was paid.

Q. Now, Mr. Stickell, does complainant seek any change in existing rates and transit charges, or back haul charges?

A. No. Western Maryland Railroad and Pennsylvania Railroad have transit tariffs applicable at Hagerstown similar to tariffs at other points in Trunk Line territory.



None of the rules or charges in either tariff are involved in this case.

We now have transit practices and through routes and rates under applicable tariffs as follows—see Jones 245-G I. C. C. 3356 and Jones 470-B I. C. C. 3490.

Exam. Berry: Are you going to tell us what routes you have?

[fol. 467] The Witness: Yes. I am going to tell them now. That was just referring to the tariffs.

We now have from Central territory, route No. 1 from Central territory and beyond on New York Central and connections with P. & L. E., Western Maryland to destination points east of Hagerstown on Western Maryland-Reading & Central Railroad of New Jersey.

Route No. 2, Wabash and its connections, W. & L. E.-P. & W. V.-W. M. to points on the Western Maryland-Reading-Central Railroad of New Jersey, and points on the New Haven Railroad in Massachusetts and Connecticut.

Route No. 3. B. & O. and connections, Cherry Run, W. Va., Western Maryland to the same points as the Wabash route.

Route No. 4. Pennsylvania Railroad and connections to points east on the Pennsylvania Railroad plus back haul charges.

Route No. 5. Pennsylvania Railroad from Buffalo to points east on the Pennsylvania Railroad plus back haul charges.

Q. Now, Mr. Stickell, in what rate group is Hagerstown on traffic from the West?

A. Hagerstown is on the Baltimore rate group on traffic from Central territory and most of the destination points are in the New York rate group, which is 3 cents higher.

We are not attacking any of these rates, but only seeking to have the joint rates named in Jones' tariff, 245-G, [fol. 468] I. C. C. 3356 on grain and feed made applicable via Hagerstown, in order to be on an even basis with our competitors at the going through rates, thus eliminating the back haul charges already described.

Q. Describe what you call the so-called Pittsburgh Dispatch route, which we are seeking in this case.

I should have said Exhibit No. 3.

(Exhibit No. 3, Witness Stickell, marked for identification.)

A. Exhibit No. 3 shows a reasonable route using Pittsburgh Dispatch or the New York Central-P. L. E.-Western Maryland route to Hagerstown, and out of Hagerstown via Western Maryland to York, Pa., or Baltimore, Md., to points on the Pennsylvania Railroad east of York, Pa., or Baltimore, Md., and to points lying between New York City and Cape Charles, Va. The distance via this route from Chicago to Salisbury, Md., is 934 miles. The distance via the Pennsylvania Railroad, is 1,041 miles.

Exam. Berry: By that route, you are seeking rates only to destinations on the Pennsylvania?

The Witness: Only on the Pennsylvania.

By Mr. Hillyer:

Q. Now, Exhibit No. 4, describe the Wabash route.

(Exhibit No. 4, Witness Stickell, marked for identification.)

[fol. 469] A. Exhibit 4 is a map showing the Wabash, Wheeling & Lake Erie, marked at the top. Exhibit 4 shows a reasonable route using Wabash-Wheeling & Lake Erie-Pittsburgh & West Virginia-Western Maryland Railroad to Hagerstown and out, as above. The distance via this route from Chicago to Salisbury is 943 miles. The distance via the Pennsylvania Railroad route is 1,041 miles.

I might state Salisbury is in the middle of the heaviest section we ship our feed to. That is the reason Salisbury is used. Any other section on the Eastern Shore would show the same difference in mileages.

Exam. Berry: Again, you are asking through routes and rates only to points on the Pennsylvania?

The Witness: Only to points on the Pennsylvania east of York and Baltimore, and between New York City and Cape Charles, Va.

By Mr. Hillyer:

Q. Now, describe Exhibit 5, please.

(Exhibit No. 5, Witness Stickell, marked for identification.)

A. Exhibit No. 5 shows mileages from Chicago, St. Louis, and Decatur, the last exhibit.

Exhibit No. 5 shows representative origins and representative destinations. It also shows distances over the present Pennsylvania route and over the two routes asked for.

It also shows the through rates on grain products. For [fol. 470] example, Chicago is an origin from which much of our raw material is obtained. Salisbury, Md., is a representative destination. The distance from Chicago to Salisbury, Md., is 934 miles via the Pittsburgh dispatch, 943 miles via the Wabash route, 1,041 miles via the Pennsylvania route.

The mileage is more favorable over either route requested than via Pennsylvania Railroad. It makes quicker time and the service is more efficient and economical, and will aid railroads in meeting truck competitive service.

Mr. Hillyer: Mr. Examiner, we offer Exhibits 1, 2, 3, 4, and 5 as part of the record in this case.

Exam. Berry: They will be accepted.

(Exhibits Nos. 1, 2, 3, 4, and 5, Witness Stickell, received in evidence.)

Mr. Hillyer: You may cross-examine this witness.

Mr. Craig: Mr. Examiner, before he starts cross-examination—

By Mr. Craig:

Q. Mr. Stickell, in your Exhibit No. 5, should not that be Decatur, Ill., instead of Decatur, Ind.?

A. No, sir. I specified that because we use quite a bit from Decatur, Ind. All the feed I get from Decatur, Ind., is not reshipped. I notice the other points are junction points and use reshipping rates.

Cross-examination.

By Mr. Eshelman:

Q. Mr. Stickell, what is the average weight, if you know, [fol. 471] of your inbound materials moving under grain rates? I, of course, do not mean coal. You say—

A. Rates?

Q. Weights. Weight in pounds or tons.

A. Do you mean per car or per year?

Q. No, I mean per car.

A. Well, I specified that. I will give you the same figures over again.

Q. That won't be necessary, because that is just what I wanted. I want to know the average weight of your inbound commodities. I think you gave weights for different commodities, didn't you?

A. No. I said that grain comes in to the marked capacity of the car.

Q. That is what I heard.

A. And feed, that means raw materials, feed averages 30 tons per car inbound.

Q. Have you ever made any computation to indicate what would be the average of all of your inbound receipts?

A. Well, I would say it averages 38 to 40 tons, because grain is our heaviest article that we use.

Q. Do you think it runs that heavy?

A. I figured that a couple of years ago.

Exam. Berry: You are now also including the various meals that are referred to, and the soy beans?

[fol. 472] The Witness: Yes.

Exam. Berry: And all those other articles.

By Mr. Eshelman:

Q. Have you made any computation of the average of your outbound products that go by rail?

A. Yes.

Q. About what average?

A. I show that as 23 tons per car. Now, that, of course, was figured on 1940; in 1941, the railroads are asking us to load heavier, and we are trying to oblige as much as we can get the customer to do so.

Q. About what was your total inbound tonnage, if you have that, for any representative period by rail and then by truck; separately, if you can give that.

A. Our tonnage for 1940 approximated 66,000 tons, of which probably 10 percent was trucked.

Q. And the balance rail?

A. Yes.

Q. And outbound, I do not believe Mr. Fulde gave the outbound tonnage; did he? In any event, can you state what it is?

A. The outbound tonnage, of course, is the same. Whatever moves in moves out. We try to average. If there is 10 percent moves in by truck we try to move 10 percent out by truck. If there is more than that of course we have to cancel tonnage.

Q. So that in your operation practically goes in goes out also: is that right? In other words, your local receipts [fol. 473] would just about be offset by your local disposition?

A. Yes, that is the—that is my job to keep that on a balance.

Q. Is some of your inbound tonnage non-transit?

A. Yes, sir; considerable of it. Milk, meat scrap, bone, meal.

Q. And how about your outbound tonnage, is some of that non-transit business, too?

A. Our outbound non-transit business is moved practically all by truck.

Q. And would that be true of most of the business that went to Elsmere Junction, or was that transit tonnage?

A. That was transit tonnage as far as Elsmere.

Q. By the way, is that a current practice, or was that one that was followed, or is that still being followed?

A. It is followed today.

Q. To as great an extent as indicated in your figures for the period indicated?

A. Yes, I would say it is running about the same. Now, this truck business has only been in operation about 2 years.

Exam. Berry: Is all the grain—that is, the buckwheat, corn, barley—you purchase in the Columbia Valley moved out by truck?

The Witness: The majority of it does.

Exam. Berry: Some of it does move by rail?

The Witness: It can move out by rail. We have rates, through rates, and it can be used, if we ship feed down into [fol. 474] Virginia, something like that, east, north-south, is a straight through movement. That does not enter into our case, but I am making that as an explanation.

Exam. Berry: No. I asked you that. That question is based on what Mr. Eshelman asked you, what is moving out by rail and truck.

The Witness: See, we are located on four railroads; that can be moved different ways.

By Mr. Eshelman:

Q. Is it your thought that if the routes were established which the complainant asks, you would have service to the destination territory on the P. R. R.?

A. It would naturally work itself out that way saving the back haul and two switching moves, which takes about four days.

Q. To what extent have the trucks, or, rather, the inbound materials which you receive at Hagerstown, to what extent, if you know, had they had a transit service in C. F. A. territory, or some point before they reach Hagerstown? In other words, would you say it would be half of your inbound tonnage?

A. Let me get that question straight. Do you mean feed and, say, corn that is raised in Iowa and stopped, say, at Decatur for transit?

Q. Yes.

A. And then moved on?

Q. Maybe it could be approximated by stating about what [fol. 475] proportion, roughly, of your inbound 66,000 tons would consist of the coarse grains as distinguished from feeds or brans, or something that has been partially through the mill.

A. I would not like to say. I never figured that up. It has never entered into—

Q. Do you think your tonnage of your inbound grains during that period, that would be matched by your 66,000 tons?

A. Do you mean the amount of grains?

Q. Yes.

A. We use more grain than we used mixed feed, by considerable percentage.

Q. It would be predominantly the grains, would it?

A. The grains, and the grains move originally from the country elevator point as much as possible.



Exam. Berry: From what elevators?

The Witness: Country elevators.

Exam. Berry: But not through the rate break points?

The Witness: Well, I might state at the present time the majority of our corn is coming from Iowa.

By Mr. Eshelman:

Q. Does it come through an elevator but still through a rate break point?

A. Through Chicago, of course.

Q. Through Chicago or St. Louis.

Exam. Berry: Well, the rate you would pay would be Chicago or St. Louis.

[fol. 476] The Witness: Well, the average rate is 43 to 46 cents from Iowa, which we pay.

Mr. Eshelman: I think both of you are right, Mr. Examiner; undoubtedly he pays the money, but the part that we are concerned with is the part east.

The Witness: Sure. It is a split rate.

By Mr. Eshelman:

Q. Yes.

What are the points in Central territory from which you receive most of your mill products. I think you named Decatur, Ind., as one. What do you receive from Decatur mostly?

A. Mostly soy bean meal.

Q. And what do you receive from Cleveland?

A. From Cleveland we get some bran middlings and linseed oil meal.

Q. Do you get anything of the sort from Indianapolis?

A. In the way of feeds, now, you are talking about?

Q. Yes.

A. Very little feeds. We get plenty of grain but very little feeds.

Q. Do you get anything that has been processed at all from Indianapolis? Isn't there some processors in Indianapolis from whom you buy materials?

A. Not that I remember of at the present time.

Mr. Hillyer: I think, Mr. Examiner, it would be well for [fol. 477] this witness right now, in view of these questions,

to clear up the difference between mill feed and mixed feed.

Will you do that, please?

A. Where I specify mill feeds coming into the plant, it means raw material such as bran, middlings, cottonseed, soy bean meal, linseed oil meal.

By Mr. Hillyer:

Q. Those are the raw materials.

A. Raw materials.

Q. For mixed feed?

A. For mixed feed.

By Mr. Eshelman:

Q. And those are properly denominated mill feed; is that right?

A. Well, mill feed naturally means bran and middlings.

Q. Then perhaps my question should have been, do you receive mill feeds from Indianapolis?

A. As far as I can remember, very, very little.

Q. Can you estimate the proportions of your inbound material that consist of whole grains as against either mill feeds or mixed feeds?

A. No, I think you asked me that question a while ago and I said it was largely a guess. I would say probably sixty or seventy percent is grain.

Q. On your Exhibit 5, your reference to the Pennsylvania Railroad mileages there I note include the back-haul. I take it that the same applies to the Pennsylvania Railroad [fol. 478] mileages which you used in your testimony in describing in Exhibits 2, 3, and 4; is that correct?

A. Wherever I used any mileages in connection with the Pennsylvania, I included the back haul of 146 miles.

Q. Yes. On your Exhibits 3 and 4 I note that the heading of each indicates that the routes to the Pennsylvania—that is to say, from the Western Maryland to the Pennsylvania is via Hagerstown although the maps themselves indicate that York and probably Fulton Junction are the ones on which the map was drawn. Which is correct there?

A. Well, I testify into Hagerstown on the Western Maryland and out on the Western Maryland, as far as York or Baltimore, which is Fulton Junction, then Pennsylvania.

Exam. Berry: Your heading is erroneous, then, on that?

The Witness: Well, that should mention, coming down to a fine point, it should mention to Hagerstown and out Western Maryland, Western Maryland-P. R. R.

By Mr. Eshelman:

Q. May I ask, did you consider in requesting routes whether you were seeking routes from the Western Maryland to the Pennsylvania via Hagerstown as the Junction?

A. No, I did not request that in any place.

Q. I meant, did you consider requesting it at all? I mean to say, did you consider it?

Mr. Hillyer: Will you state that question again, please, Mr. Eshelman?

[fol. 479] Mr. Eshelman: I say, in determining what routes you would ask for, did you give consideration at all to requesting a route via Hagerstown?

The Witness: You mean out over the Pennsylvania Railroad?

By Mr. Eshelman:

Q. Yes.

A. Well, that gets right into the out-of-route movement again. I am asking for the most direct movement.

Q. No, but I meant, suppose under your illustration—take Exhibit 3, for instance. The shipment into Hagerstown was over this Pittsburgh dispatch route, and then went out beyond Hagerstown via the Pennsylvania to Harrisburg, and so forth.

A. No, that was never considered. We asked for the most direct route, to save mileage and make quick time.

Q. And was the selection of York and Fulton Junction your own judgment as to the preference as among those possible routes if a route were to be established?

A. Well, I got what advice I could get, and I was advised that that was the quickest route.

Mr. Hillyer: That is, the advice you got was from whom,—the Western Maryland Railroad?

The Witness: I asked the Western Maryland Railroad and I asked other traffic people.

By Mr. Eshelman:

Q. And did some representative of that company indicate that the route to York and Fulton Junction would [fol. 480] be preferable to that company via those junctions?

A. Well, this route is really a continuation of the case 10 years ago, and it followed along the same lines.

Q. The thing I really wanted to get, your view or opinion about, or your own position, so far as you are concerned; if the Commission were to establish routes in response to this complaint, would you care whether those routes operated via Hagerstown or via York or via Fulton Junction, or any other junction, so far as the service—so far as that is concerned, as long as the resulting service was satisfactory. I mean to say from your standpoint, are you concerned that it should move through any particular junction other than the resulting service be good?

A. Well, in the first place, I would say if that was given to the Pennsylvania at Hagerstown you lose one day right off the reel.

Q. You would?

A. That is the standard practice there now because we are moving cars every day. You immediately lose one day switching from Western Maryland to Pennsylvania. That is one of the reasons it was asked the other way.

By Exam. Berry:

Q. Doesn't that switching have to take place at York, or the other place?

A. That is direct connection. It is under Western Maryland.

Exam. Berry: Isn't it a connection at Hagerstown?

[fol. 481] A. It is the switching connections in which a day is lost.

Exam. Berry: Why is a day lost one place and not the other; that is what I was trying to find out. To make the connection at either place you have got to switch, haven't you?

A. For instance, the Pittsburgh dispatch is a connection of three railroads but those trains run right straight through. The New York Central, Pittsburgh & Lake Erie, they move straight through. Now, that is a railroad

proposition, if they have sufficient traffic, go through Western Maryland to Baltimore, which I imagine they have, why there would be through trains move right through on Western Maryland to Baltimore and Pennsylvania.

Exam. Berry: Do you mean Western Maryland to York and Pennsylvania beyond?

[fol. 482] A. Western Maryland to York and Pennsylvania beyond. Now, that can be changed, if it is any help to the Commission.

Exam. Berry: Well, I do not still see why there would be a day lost, a day more required to move by the way of Harrisburg than York; that is what I was trying to find out.

The Witness: Well, of course, we are not moving anything by this requested route because we have no rates that way, so I do not know what the experience is, and I do know the experience the other way moving.

Exam. Berry: You do not know that you would gain a day by moving via York?

The Witness: That is what I was advised it would be.

Exam. Berry: Go ahead.

By Mr. Eshelman:

Q. Who controls the switching at York? That is to say, what line does the switching of your plant at Hagerstown?

A. The Western Maryland does all the switching because we are on the Western Maryland tracks. Of course, the Pennsylvania would push their cars over to the junction point, which I show on my map, South Junction.

Q. The switching then at York, which takes the extra day, is done at York?

Exam. Berry: At York or Hagerstown?

By Mr. Eshelman:

Q. I mean at Hagerstown.

A. At Hagerstown. Well my experience has been when [fol. 483] a car is loaded there in the morning it is on the junction at noon. It is on the junction, if it is loaded in the evening—I say the evening, they switch at 6 or 7 o'clock—it is on the junction before midnight, which is railroad practice.

Q. Do you have any routes at all from any part of Central

territory that enables you to reach the peninsula, or any part of the peninsula at the flat rate without back-haul charge?

A. We are unable to get there, only over the Pennsylvania, and showing the back-haul charge.

Q. You do not think you have any territory in Central territory from which you can draw that would reach any part of the peninsula without back-haul charge?

A. I never made any—the B. & O. at one time had some sort of a service, Baltimore and Ohio Railroad, out of Baltimore, in which they went over to a small point in the Eastern Shore, and traveled on some little railroad there which is owned by the Pennsylvania, but I tried to use that some years ago, but the bridge was washed out and it was discontinued.

Q. I had reference to the Pennsylvania. For instance, Wilmington down to Baltimore, and all that territory.

A. As far as I know, there is no way to get through there except with the back-haul.

Q. The Pennsylvania, I think you say you have transit via the Pennsylvania at Hagerstown when the back-haul charge is paid; that is correct, isn't it?

[fol. 484] A. Yes.

Q. And that was put in at the request of your company, was it not?

A. Yes, sir.

Q. And there is also absorption by the Pennsylvania of Western Maryland switching charges on that business; isn't that so?

A. There have been the last year, or probably a little more; before that we had to pay it.

Q. Can you reach—I think you mentioned the territory you could reach without out-of-route or back-haul charge, but I am not sure whether you named Lackawanna. Can you reach points on the Lackawanna?

A. No.

Q. On the Lehigh Valley?

A. No.

Q. On the Erie?

A. A few points on the Erie, and if you are getting down to fine points, I can reach a few points on the Pennsylvania north of Harrisburg, such as Watsontown.

Q. And Long Island?

A. Long Island I am not quite sure. I can look in the tariff, if you want to know. I think my normal route is



New York Central to go in there, but I am not quite positive. We are just opening up that route and haven't gone into it yet. The Pennsylvania go in there, I know.

[fol. 485] Q. Does your company not ship into the Carolinas at all?

A. No, sir.

Q. Do you know whether the grain which you transit or the mill feed which you transit, or to what extent that has more than one transit operation performed on it east of the rate-break point like Chicago, St. Louis, and so forth?

A. Well, I have noticed on some freight bills that there is some extra transit charges, but it does not interest me particularly, and I could not give you any figure, but I do not think it is so very heavy.

Mr. Eshelman: I think that is all I have.

By Mr. Cross:

Q. Mr. Stickell, you stated that all of your competitors could reach Eastern Shore-P.R.R. points at the flat rate. Is it a fact that the mill at Portsmouth, Va., represented by Mr. Craig, can reach those points at the flat rate?

A. Well, when I—the territory that we work in is practically, you might say, north of the Mason and Dixon Line. We are practically on it, and that is what we consider our competitors. Now, Norfolk, Va., is in southern territory. Because we do not get down there I really know very little about what is going on down there.

Q. You know he can't reach it at the flat rate, don't you?

A. Well, I have never gone into it; practically any mill in the South would not be able to get in there, but they have [fol. 486] their whole southern territory, and besides I would imagine the Allied Mills, being a large mill, a large concern, would have plenty of plants in the Central territory that could go there without using—

Q. That is not the question I asked you, and I understand the answer to my question is you do not know?

A. I do not know.

Q. Now, there are manufacturers of feeds at Baltimore, are there not?

A. Yes, sir. There is a mixing plant in Baltimore.

Q. Isn't there some plant called Steen?

A. I do not know the name of it. I know there is a plant there.

Q. Now, can that plant—do you know which railroad that plant is located on?

A. No, sir. I am not acquainted with them.

Q. If by chance that plant is located on the Baltimore & Ohio Railroad, would you say that it could reach the Eastern Shore at the flat rate?

A. If he was on the B. & O. he could not reach it.

Q. He could not. You don't know anything about Winchester, Va., do you?

A. So far as I know, there is no plant there. There used to be a flour mill there. I doubt very much whether it is there any more.

[fol. 487] Q. Now, these—so what you really mean as to your competitors reaching the Eastern Shore, P.R.R. points, is that such of your competitors in the East as are located on the Pennsylvania Railroad can reach these Eastern Shore P.R.R. points at the flat rate; is it not?

A. No. In Mr. Fulde's testimony he gave you quite a list of competitors and location points.

Q. Well, let us take your competitors in the East. Isn't it true as to your eastern competitors that only those located on the Pennsylvania Railroad can reach these Eastern Shore points at the flat rate?

A. Just what points do you have reference to? You probably have some in mind, and probably I could answer your question better.

Exam. Berry: Salisbury and similar points.

By Mr. Cross:

Q. The points that you have in mind which you want to reach.

Exam. Berry: On the Eastern Shore.

A. Well, you would have to be located on the Pennsylvania Railroad if you are east of Hagerstown to get on the Eastern Shore on the P.R.R.

Q. You have to be on the Pennsylvania Railroad in Eastern territory to get to the Eastern Shore at the flat rate, don't you?

A. Well, I am not acquainted. What is the Eastern territory, is Pittsburgh in Eastern territory?

Q. Yes. Pittsburgh is in Eastern territory.

A. Pittsburgh should be able to get there without any transit on most any rate.

Q. Have you a competitor at Pittsburgh?

A. I think there is a mixing plant there.

Q. I do not think he was listed by Mr. Fulde, was he?

Mr. Fulde: It is a small mill there.

Mr. Cross: And not a competitor.

By Mr. Cross:

Q. Now, these competitors in Eastern territory, such as at Lancaster, can't reach points which you can reach at the flat rate, can they?

A. Well, now, are you referring to Eshelman? Eshelman has a plant in Ohio that he can reach it.

Q. I am talking about the plant at Lancaster.

A. Lancaster is not on the Western Maryland Railroad. He can't reach it.

Q. Your competitor at Lancaster cannot reach the Western Maryland deliveries which you can reach at the flat rate; can he?

A. I will have to answer that question that I do not know, because I never checked it to those. He may have other rates from Buffalo, down the same way, like that, and be able to get in there. I am not an expert traffic man, to go in there. I am just a partial traffic man.

[fol. 489] Q. You don't know?

A. I will say I don't know.

Q. Now, is it not a fact that you also have transit to points on the Baltimore & Ohio Railroad at a back-haul charge?

A. Yes, we have that the same as we have the Pennsylvania.

Q. Now, this competitor of yours at Lancaster, has no similar arrangement, has he?

A. Any customer on the railroad, Pennsylvania Railroad, at Lancaster does not need any back haul charges.

Q. Your competitor at Lancaster cannot reach Baltimore & Ohio deliveries at the flat rate less a back haul charge; can he?

A. I don't know.

Exam. Berry: Are you asking for any joint rates to other routes on the Baltimore & Ohio?

The Witness: No, sir. Pennsylvania only.

Mr. Cross: That is certainly not our understanding of the complaint, Mr. Examiner.

Exam. Berry: I was judging by the evidence.

Mr. Cross: Yes, sir. We asked Mr. Hillyer in Chicago as to whether his complaint was limited to the Pennsylvania, and he said he could not so state, so naturally we are here protecting ourselves.

Exam. Berry: I was not criticizing you for being here. I just wanted to get it clear. I judged that was the case from the evidence, and now they say it is.

[fol. 490] Mr. Cross: Of course, we are going to ask for a finding by the Commission as to the Baltimore & Ohio deliveries that the existing routes to those points are adequate and proper.

Exam. Berry: Off the record.

(Discussion off the record.)

Exam. Berry: On the record.  
Proceed.

By Mr. Cross:

Q. Mr. Stickell, have you any warehouse or distributing operation at a point on the Eastern Shore?

A. Yes. We have a small place at Salisbury, Md.

Q. Now, you gave some existing routes which you have under which you have transit. As I recall you did not mention the transit arrangement to points on the Baltimore & Ohio Railroad, did you, in that list?

A. No, sir. We mentioned B. & O. and its connections, Cherry Run, W. Va.

Q. You also have transit to Baltimore & Ohio deliveries and a back-haul charge, have you not?

A. Yes, we have that, but that is not in this case.

Q. Well, you were stating arrangements which you had. You gave a list of them, but I notice that you omitted quite a number, and that was one of the ones that you omitted.

Now, is it or is it not true that you also have transit at a back-haul charge to points on the Southern Railway in connection with the Baltimore & Ohio?

[fol. 491] A. Yes, I suppose that is still in effect. I used to use it, but I do not use it any more.

Q. I am only talking about the routes which you have transit to today, and you gave a list of them, and it seemed to me that you omitted a number of available routes.

Now, I am simply interrogating you as to the ones which I thought you omitted.

A. Well, that route is probably in effect, but I would not like to say being as I have not used it for probably eight years.

Q. Haven't you also transit in connection with the so-called Durban route; that is, Chesapeake & Ohio to Durban and thence Western Maryland to Hagerstown?

A. That is exactly the same route as the Wabash and its connections, but I did not think it was necessary to bring it in. It is complicating the case.

Q. But that is a route on which you have transit today?

A. It is the same thing as the Wabash and its connections except it would be the C. & O., Durban, Western Maryland.

Q. You also have a transit route in connection with the Norfolk & Western, haven't you?

Exam. Berry: For what purpose are you asking these questions now?

Mr. Cross: I am talking about his original inbound territory.

[fol. 492] Exam. Berry: Yes, and to what destinations?

Mr. Cross: I think the destinations are to points on the Reading, Western Maryland, Central Railroad of New Jersey, probably also on the Lehigh Valley, D. L. & W., and Erie and the New England lines.

The Witness: The Norfolk & Western is really part of the B. & O.-Durban route. I do not think you are able to move stuff, say, from Ohio the whole way to Hagerstown via N. & W., N. & W. and Chesapeake & Ohio seem to mix that up in some way. I do not use it.

By Mr. Cross:

Q. Isn't there a route known as the Blue Ridge dispatch made up of Norfolk & Western and its western connections to Hagerstown?

A. Which the C. & O. come in there?

Q. That is as one of the western connections of the Norfolk & Western.

Exam. Berry: Mr. Cross, what is the materiality of that in view of the fact now that they are only asking for deliveries on the Pennsylvania?

The Witness: That is the reason I kept it out of here.

Mr. Cross: I want to show that there are a very substantial group of through routes today.

Exam. Berry: Well, suppose he has. Would that be any justification for denying him Pennsylvania delivery?

Mr. Cross: He says that he is being cramped by the fact [fol. 493] that he has not these Pennsylvania deliveries.

Exam. Berry: As to the Pennsylvania deliveries, yes.

Mr. Cross: Yes.

Exam. Berry: Well, that is all we are concerned with.

Mr. Cross: Well, he listed his routes, which he did not—

Exam. Berry: The fact that he may have through routes to points on every other railroad in the country would not affect the question as to whether he also has a right to a through route to destinations on the Pennsylvania.

Mr. Cross: It certainly would effect whether he was being held down in his ability to market. I am willing to drop it as it is. I think he stated the routes I have in mind.

Exam. Berry: You may put it in, if you want to show those routes, and save a lot of time having him put it in. You may have one of your tariff men put it in tariff form if you think it advisable.

Mr. Cross: He has covered it.

Mr. Craig: Mr. Examiner, I would like to ask Mr. Stickell a question or two.

By Mr. Craig:

Q. Mr. Stickell, in your Exhibit No. 3, I gather from that that you are asking for through routes from Cape Charles, Va.; is that right?

A. Only as far as Cape Charles.

Q. Now, a few minutes ago in answer to a question of Mr. Cross you rather gave me the impression that you thought [fol. 494] Portsmouth, Va., was so far south that it could not get into this territory that you are trying to get into.

A. So far as I am personally concerned, it may not be very far from Cape Charles, but I just considered that in Southern territory.

Q. What is the distance Hagerstown to Cape Charles?

A. Do you mean around by the Pennsylvania?

Q. Yes.

A. I do not know. I would imagine on a guess, about 270 or 280 miles.

Q. What is the distance Portsmouth, Va., to Cape Charles?

A. I do not know.

Q. Would you say that there was any point on this Exhibit No. 3 as far as Dagsboro, Del., that the distance was greater from Norfolk or Portsmouth than it was from Hagerstown?



Exam. Berry: By rail, do you mean?

Mr. Craig: Yes, sir; by rail.

A. Rail and boat.

By Mr. Craig:

Q. By rail only.

A. By rail, that would be around through Hagerstown, or through—

Q. Yes, Hagerstown to Dagsboro, Del., Norfolk, Va., too, by ferry and the Pennsylvania Railroad to Dagsboro.

A. That is what I mean by boat. You say ferry, part of the railroad movement. I would say Portsmouth was [fol. 495] nearer than Hagerstown is.

Q. Would you agree with me, then, that perhaps Norfolk did have some rights to compete in this Eastern Shore territory with Hagerstown, seeing that the distance was much nearer than the Hagerstown distance was?

A. Well, we have to limit our case to something. Now, you take the whole Southeastern territory—

Exam. Berry: Can't you just answer that "yes" and let it go?

The Witness: All right, yes.

Exam. Berry: Certainly they got a right to compete in there just as much as you have, B. & O.-Pennsylvania destinations.

The Witness: Yes.

Exam. Berry: There is one question I want to ask you, Mr. Stickell, and that is you referred to four days' delay. Now, did you mean it took four days longer to reach the Eastern Shore by rail using the Pennsylvania today than it did trucks, or what four days longer than what?

The Witness: The four days is consumed in a day from Harrisburg to Hagerstown each way, that makes two days; and the day lost in switching each way, that is four days.

Exam. Berry: That is the four days you meant?

The Witness: That is the four days I meant.

Exam. Berry: Do you think you would save that four [fol. 496] days if you had this new route, or save two of them?

The Witness: Well, the average time in a car from Hagerstown via the Pennsylvania to the Eastern Shore is three to four days, depending whether it is the main line of the Pennsylvania or off move down through—they have a number of tracks; when a car leaves Hagerstown, Western

Maryland to Elsmere, that leaves Hagerstown late in the morning; leaves in the morning, it is at Elsmere the next morning. That is the actual movement.

Exam. Berry: What I am trying to get at is how much longer it takes today for a rail movement by the Pennsylvania, using the back haul, than it would take if you had the routes that you lost. I understood you to say it would be four days longer, and that is what I was trying to get straight. Now, you say it takes one day at Hagerstown and one day for the run, that would be two days instead of four, would it not?

The Witness: Two days each way, you see. See, it moves from Hagerstown, you were talking about Harrisburg. One day down, one day back, and one day switching movement, and two days the other way, so it is saving two days.

Exam. Berry: We will take a short recess, gentlemen.

(There was a short recess taken.)

Exam. Berry: Gentlemen, let us resume.

Mr. Eshelman: I have a few more questions, if I may be permitted to interrogate the witness.

[fol. 497] Exam. Berry: You may.

By Mr. Eshelman:

Q. I am just interested in this three or four days that you mentioned as being a time element that would affect use of the Hagerstown route, and I think that you said that one of the days would be consumed in the movement from Harrisburg to Hagerstown.

A. That is right.

Q. Now, that would be, of course, on the assumption that you were going to employ the P. R. R. transit to the P. R. R. route, in and out route; isn't that correct? That is to say, if the routes were established, such as the complaint asks for, and if they were established from the Western Maryland and P. R. R. and Hagerstown, then you would not have any inbound loss of one day coming down from Harrisburg; would you?

A. That is correct.

Q. And whatever the time element might be getting into Hagerstown under the present P. R. R. route, that would properly be compared with the time from the origin to Hagerstown via whatever routes you either now have or might be established; isn't that so?

I mean to say, that would be really your inbound movement, one inbound movement to be compared with another.

A. Yes, that is correct.

Q. Then, on your outbound, your proper comparison would be, I take it, the movement from Hagerstown to what [fol. 498] ever destination you are reaching, either by the present P. R. R. route, or whatever route might be established.

A. That is correct.

Q. Now, I take it, then, that your outbound movement would be two or three days from Hagerstown to destination on your outbound movement; isn't that correct?

A. Do you mean on the requested route?

Q. No, I mean to say by your P. R. R. route outbound.

A. The P. R. R. route outbound as a rule takes three to four days, mostly four days to destination.

Q. And did you include in that computation an inbound day coming down from Harrisburg—I mean excluding that?

A. No. The testimony, I meant in that line, takes three or four days to Harrisburg via Pennsylvania to Eastern Shore points.

Q. For outbound movement.

A. For outbound movement.

Q. For instance, what?

Exam. Berry: And the testimony, as I understood, is that one of those days is consumed in moving to Harrisburg from Hagerstown; is that correct?

The Witness: That is right.

By Mr. Eshelman:

Q. And you did not say, or have you obtained any information as to the length of time that it would take for either of the movements to destination, we will say to a similar [fol. 499] destination via either of the sought routes through York or Fulton Junction?

A. No, those routes are not in effect, so I could not say what they are.

Q. Well, do you have in mind any particular time that you have anticipated would be saved by such routes?

A. It should save two days.

Q. You think it would save two days?

A. I do.

Q. Save two days?

A. I do.

Q. Is that two days important from your standpoint?

A. The customers will often call us up in the evening and want their feed the next day.

Exam. Berry: But just one moment. That would only be one day, so far as the wants of the customers.

The Witness: I say, that is what they ask for. They want their feed as quickly as possible. For that reason we keep a small amount of feed at Salisbury, Md.

By Mr. Eshelman:

Q. Will you state why it would be so much more important—that is, if I can ask you to understand the customers' point of view, why would it be so much more important for him to say that day, or possibly two days, as you think it would be in that case, while it would not be important for him if several days elapsed while he would be getting [fol. 500] the grain from a more western market or mill, in C. F. A. territory or Kansas City, for instance?

A. Well—

Q. Do you think that is just human nature, do you?

A. Our—I can't think. Our experience with the customers in the Eastern Shore is they want very quick service. That is one of our reasons for putting the trucking service in that we already have.

Q. In connection with these outbound shipments, are you entitled to mix various commodities; for instance, an outbound car does not need to consist of all one thing, does it?

A. No. The transit tariffs allow you to mix anything in the grain product line.

Q. So that you could ship, for instance, mixed feed, bran, middlings, various things in that car; is that right?

A. If it is allowable in the tariff.

Q. And do you do that to some extent?

A. Very little.

Q. To some territories more than others, or how?

A. Well, I would say very little anywhere.

Q. But the right is there if you choose to do it?

A. Yes, the transfer tariff allows that.

Q. Do you receive any mill feeds or mixed feeds at your place at Salisbury other than from Hagerstown?

A. No, only from Hagerstown.

[fol. 501] Mr. Eshelman: I think that is all. Thank you.

Mr. Hillyer: That is all.

Exam. Berry: You may be excused.

(Witness excused.)

Exam. Berry: Call your first witness, Mr. Eshelman.

Mr. Eshelman: Our first witness left his exhibits at the hotel. I was wondering whether you think we could adjourn early and reconvene early, and then we would be ready to go.

Exam. Berry: Is that satisfactory to you, Mr. Hillyer?

Mr. Hillyer: On this question of adjournment, Mr. Examiner, I have a matter I would like to bring up at this time.

Mr. Eshelman: I did not mean an adjournment.

Exam. Berry: A recess.

Mr. Hillyer: I tried to accommodate the other side having this case postponed from time to time, and they finally got it set on a day that runs right into a case that I have coming up tomorrow before the Illinois Commerce Commission in Chicago. The argument starts there at 2 o'clock, and that case has been pending for several years, and I could not get it put off, and I am sincerely hoping that they are going to finish this case this afternoon so that I can get back there.

Exam. Berry: The question now is that we recess for the same length of time we would ordinarily, and resume.

Mr. Hillyer: But then I want to get that request in to you, too.

[fol. 502] Exam. Berry: We will try certainly to finish, and accommodate you in every way we can.

Mr. Eshelman: I might say I can confidently assert that we shall not be able to finish today. If you are willing to burn the midnight oil, and therefore let us go as far as we can today, and then whatever arrangement Mr. Hillyer and you wish to make, or you wish to make for his convenience, I think you will find us endeavoring to be cooperative.

Exam. Berry: How much time do you want for lunch?

Mr. Eshelman: Whatever you say. We can eat as fast as anybody. I would say not less than 1 o'clock.

Exam. Berry: We will recess now until 1 o'clock.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 1 o'clock p. m. of the same day.)

[fol. 503]

AFTERNOON SESSION

Exam. Berry: Gentlemen, we will resume.

Mr. Eshelman: Mr. Examiner, we expect to have three rate witnesses, and they will each tell a part of the story, and we will begin with Mr. Heimert.

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E. W. HEIMERT, being first duly sworn, testified as follows:

Direct examination.

By Mr. Eshelman:

Q. Mr. Heimert, have you given your full name to the Reporter?

A. E. W. Heimert.

Q. And what is your connection with the Central Freight Association?

A. I am secretary of the Interstate Commerce Law Committee.

Q. And as such do you have charge of commerce work for the C. F. A. lines, which is handled by the Central Freight Association?

A. That is right, I do.

Q. How many years have you been engaged in traffic work?

A. Over 20 years.

Q. I think that will be enough. Twenty years is enough.

Exam. Berry: I guess they will waive the qualifications. Won't you?

Mr. Hillyer: Yes, sir.

By Mr. Eshelman:

[fol. 504] Q. Are you—just to shorten this up, are you chairman of the Defense Committee of the Central Freight Association defendant lines?

A. That is right, I am.

Q. Have you prepared exhibits which deal with this situation which is here involved, primarily from the standpoint of the origin territory, both Central territory and west, and particularly as to routes therefrom which are available to the East?



A. Yes, that is right. I have prepared something to this end and testimony to accompany them.

Q. Have you also prepared exhibits showing the points located in Central Freight Association territory from which grain and grain products may be drawn for transit at Hagerstown, Md., and then forwarded to eastern destinations?

A. I have, in the form of map exhibits. The first of these maps, which is Exhibit No. 6, shows the territory from which the grain may move for transit under the B. & O. Railroad tariff; the second when for transit under the P. R. R. tariff; and the third, when for transit under the Western Maryland tariff. The tariff references are shown on the maps.

Exam. Berry: Transit at Hagerstown?

The Witness: That is right.

(Exhibit No. 6, Witness Heimert, Marked for Identification.)

The Witness: The second map, or Exhibit No. 7, shows the origin territory from which grain may be shipped via [fol. 505] Hagerstown, Md., under the Pennsylvania Railroad tariff; and the third map, Exhibit No. 8, shows the origin territory from which grain may be shipped via Hagerstown, Md., under the Western Maryland tariff.

(Exhibits Nos. 7 and 8, Witness Heimert, Marked for Identification.)

By Mr. Eshelman:

Q. What do these three maps indicate in general?

A. They indicate that practically all of Central Freight Association territory is open for grain and grain products that may be shipped to Hagerstown for transit purposes.

Q. Is there any peculiar circumstance in connection with the grain rate structure which would cause the rates to have a much wider application than indicated by these three maps?

A. Yes. Through one-factor rates on grain and grain products are not in effect from Western Trunk Line territory, and the rates are constructed on a combination basis made up of the Western Trunk Line factor from the western origin point to the junction with the Central Freight Association road, or the "rate-break" point, as it is called,

plus the proportional or reshipping rates published by Agent Jones from the "rate-break" points to eastern destinations. The principal rate-break point on which the combinations are generally constructed are Chicago, Peoria, East St. Louis, and St. Louis. Since there are rates and routes applicable from the rate-break points, all of West-[fol. 506] ern Trunk Line territory is covered from an origin standpoint with rates and routes; the maps, however, do not portray this western territory but are confined to showing the extent of C.F.A. territory that is open. In other words, to get the situation from Western Trunk Line territory you just hook onto these routes that are shown from Chicago, Peoria, and St. Louis; that would give you variable routes from Western Trunk Line territory.

By Mr. Eshelman:

Q. Your map Exhibit No. 8 covered the origin territory in C.F.A. and beyond from which grain and grain products could be drawn for transit at Hagerstown, Md., under the Western Maryland Railway transit tariff. What destination territory is available when the transit is at Hagerstown on the Western Maryland on grain originating at points shown on that map exhibit?

A. There is a very extensive destination territory available to transit without out-of-route or back-haul charge under the Western Maryland tariff at Hagerstown, Md. This territory is portrayed in Exhibit No. 9, which is another map exhibit. Due to the limitations of the map, it was impossible to show the New England destination territory open to transit at Hagerstown without out-of-route or back-haul charge.

(Exhibit No. 9, Witness Heimert, Marked for Identification.)

Q. Take Trunk Line destination territory. Generally, [fol. 507] what territory is covered without out-of-route or back-haul charge at Hagerstown?

A. The lines of the Central Railroad of New Jersey, Reading Company, Delaware & Hudson, Long Island Railroad, S.I.R.T. Railway, P.R.S.L., L. & N. E. Railroad, and L & H Railway; the L. V. Railroad Wilkes-Barre territory and east; the D. L. & W. Railroad, Alford, Pa., and east; stations on the Erie Railroad and N.Y.O. & W. Railway

in the Scranton district, and the Western Maryland Railway east of Hagerstown, Md.

Q. You say the map does not permit showing the New England destination territory as to which transit is available at Hagerstown on the Western Maryland Railway. Please outline this destination territory.

A. Practically the entire lines of the Bangor & Aroostook Railroad, the Boston & Maine Railroad, the Maine Central Railroad, and the New York, New Haven & Hartford Railroad are open to transit at Hagerstown on the Western Maryland Railway without out-of-route or back-haul charge. To both Trunk Line and New England destination territories the route is that shown in Baltimore & Ohio I. C. C. A-4, to which the C. F. A. eastbound grain and grain products tariff refers. The route is via Baltimore & Ohio Railroad to Cherry Run, W. Va., Western Maryland Railway to Shippensburg, Pa., thence Reading Company and connections.

[fol. 508] Q. Have you anything further to say regarding the territory covered by this map?

A. Just that there is a rather large origin territory on the Pennsylvania Railroad in C. F. A. and a considerable destination territory on the Norfolk & Western Railway open to grain transit at Hagerstown, Md., without out-of-route or back-haul charge, as the route is Pennsylvania Railroad-Hagerstown, Md., Norfolk & Western Railway.

Q. Will this be covered in further detail a little later in your testimony?

A. The witness for the Pennsylvania Railroad will cover the details.

Q. Have you prepared a series of exhibits that would indicate the routes at present available to the transit operator at Hagerstown, Md., both with and without a back-haul charge, on grain from Central territory to eastern destinations?

A. Yes. Five exhibits have been prepared illustrating such typical routes between representative points. They do not show all of the available routes between the points shown, but they are prepared in sufficient detail to be truly representative of the prevailing situation.

Q. Please explain them in order.

A. Exhibit No. 10 is a statement of typical routes from Chicago, Ill., to New York, N. Y., via which transit is avail-

able at Hagerstown, Md., without back-haul or out-of-route [fol. 509] charge.

(Exhibit No. 10, Witness Heimert, marked for identification.)

The Witness: The companion exhibit, No. 11, shows typical routes from Chicago to New York City via which there is a back-haul charge.

(Exhibit No. 11, Witness Heimert, marked for identification.)

The Witness: It will be observed from Exhibit No. 10 that Central Railroad of New Jersey, D. L. & W., and L. V. Railroad deliveries are available at New York, N. Y., without back-haul or out-of-route charge when the transit is performed at Hagerstown, Md.

By Mr. Esbelman:

Q. You have shown Chicago, Ill., as a typical origin. Will you state why Chicago was used as typical?

A. Yes. These routes cover not only the local Chicago rates but also the proportional or reshipping rates. Grain from Western Trunk Line territory to Trunk Line destinations does not move on one-factor rates, but on combinations made on so-called "rate-break" points, of which Chicago is one and probably the most important. Thus, in addition to covering Chicago proper, these rates cover western origin territory. The same comment, except as to possible rank of importance, holds with reference to Peoria, Ill., and East St. Louis, Ill. Moreover, the rates from Chicago to New York are the base for the rate structure in the East.

Q. Proceed with your explanation of the exhibits.

A. Exhibits Nos. 12 and 13 cover routes from Decatur, Ill., to Freehold, N. J., No. 12 showing illustrative routes via which transit is available at Hagerstown without back-haul or out-of-route charge, and Exhibit No. 13 covering routes for Pennsylvania Railroad delivery for which there is a back-haul charge.

(Exhibits Nos. 12 and 13, Witness Heimert, Marked for Identification.)

Q. What is the particular significance of choosing Chicago and Decatur, Ill., as the typical origin points?

A. Chicago is the most important grain market in the country, especially as it pertains to wheat, corn, and other grains. Decatur, Ill., is the center of the soya bean industry and a very important point as to soya beans.

Exam. Berry: Is that Decatur, Ill., or Indiana?

The Witness: That is Illinois, Mr. Examiner.

By Mr. Eshelman:

Q. Will you proceed with your explanation.

A. The concluding exhibit of this series, No. 14, indicates the routes from Peoria, Ill., to Salisbury, Md., which are subject to out-of-route charges.

(Exhibit No. 14, Witness Heimert, Marked for Identification.)

Q. What conclusion do you draw from these exhibits?

[fol. 511] A. Generally speaking, the transit operator at Hagerstown has as many routes and as much destination territory open to him on C.F.A. and Western Trunk Line grain as any other grain transit operator located in the eastern portion of Trunk Line territory.

Q. Have you made any comparisons of existing routes at present available with additional routes which are sought for the purpose of establishing Hagerstown directly intermediate from western origins to eastern destinations?

A. Yes, Exhibit 15 sets forth this situation.

(Exhibit No. 15, Witness Heimert, Marked for Identification.)

Exam. Berry: Do you realize at the present time there are only two routes sought? Here you talk about typically sought routes.

Mr. Eshelman: From an origin end, these routes, the Pittsburgh dispatch route and the route through the Wabash are stated by the complaint to be typical.

Exam. Berry: Yes, but I am talking about now on the—

Mr. Eshelman: You are talking about destination.

Exam. Berry: Yes.

Mr. Eshelman: This is partly origin, too, but, of course, these were drawn in the light of his complaint and therefore we cannot recast these exhibits for the minute. We will have to put it in. Also I think they will bear on other issues [fol. 512] that we have here raised by the complaint.

**Exam. Berry:** Can't you disregard all other issues now except for the request for the establishment of these two routes, destination routes—that is routes of destination of the Pennsylvania?

**Mr. Eshelman:** Perhaps I do not make myself clear, Your Honor. I might say that the railroads regard this case as opening the door or seeking to establish a principle that will open the door, and we think the Commission is entitled to know if they do this what is the natural result or what will follow, and therefore we have to show the whole thing. We think the Commission is entitled to know.

**Exam. Berry:** I do not want, of course, to prevent you from putting in anything you want to put in material, but the case appears to me now—we have got a request for through routes and joint rates to points on the Pennsylvania Railroad only.

**Mr. Eshelman:** Yes, I so understand they are limited today.

**Exam. Berry:** Yes, and that those are the rates we are concerned with.

**Mr. Eshelman:** But the origin territory is not limited yet.

**Exam. Berry:** The origin territory, no, but I do not see the materiality of whether they have through rates with transit to all other points on every other route in the East [fol. 513] except the Pennsylvania.

**Mr. Eshelman:** I might say, Mr. Examiner, so that you might see the way our minds are working on that, and what we have in mind—we are prepared to show that the situation of which this complainant complains is the general situation, not an unusual situation, but the general situation in the East, that he is asking here for special treatment, for a special consideration. He is asking the Commission here for a type of relief which, if granted, we wonder how the Commission could refuse to extend the same type of relief to others. Now, in order to lay the background for that we have to show what he has, what the other fellows have.

**Exam. Berry:** All right.

By Mr. Eshelman:

Q. Will you continue.

A. Exhibit No. 15 sets forth this situation. It consists of three classes of routes; two present and one sought



between the typical origins and destinations shown at the extreme left of the exhibit.

Mr. Eshelman: I might say, however, in deference to the Examiner's statement, and also the action of the complainant, that wherever in our testimony that we refer to a sought route as something as to which he has withdrawn, of course we want you to understand that we are not trying to tell him by our testimony what he is asking. It is merely that it happened to be written that way, and I think it can be said [fol. 414] faster, and just so it is understood.

Mr. Cross: It is a route based on the same theory.

Mr. Eshelman: Well, that may be, but I mean to say, in saying that we are not to be understood as changing the situation from what you have indicated.

A. Column A depicts direct routes between origin and destination. Column B shows existing routes via which Hagerstown is intermediate and no out-of-route or back-haul charge is involved. The routes shown in columns A and B are present effective tariff routes. Column C shows similar information for routes which are not effective but are of the nature sought by the complainant to establish Hagerstown directly intermediate.

Q. Are the Column C instances you have analyzed representative of those sought by the instant complaint?

A. In my opinion they are. The examples shown under column C are representative of what is sought because they comprise carriers named parties defendant to the instant complaint and include routes consisting of the carriers and junctions cited in the complaint as typical.

Mr. Hillyer: Are you talking about one of your exhibits now?

The Witness: Exhibit 15.

Mr. Hillyer: Which page?

Mr. Eshelman: I think he had not referred to either page [fol. 515] in particular.

Mr. Hillyer: Is it Exhibit 15?

Mr. Eshelman: Yes, that is right.

A. Column C, we are talking particularly about column C, Mr. Hillyer.

By Mr. Eshelman:

Q. Do you have an exhibit portraying the situation with respect to destinations on the Eastern Shore or Del-Mar-

**Va Peninsula similar in form to that covering grain transit at Hagerstown ex C. F. A. when destined Chester, Pa., Freehold, N. J., New York, N. Y., etc.?**

**A. Yes. Exhibit No. 16.**

(Exhibit No. 16, Witness Heimert, marked for identification.)

**The Witness:** The destinations covered are Dover, Del., Georgetown, Del., Cambridge, Md., Salisbury, Md., Franklin City, Va., and Cape Charles, Va.

**Q. Are these destinations representative of the peninsula situation?**

**A. They are.** They are located in different parts of the peninsula stretching from Dover on the north to Cape Charles on the south. Cambridge, Md., is on the Chesapeake Bay and Franklin City, Va., is on the Atlantic Ocean. The destinations shown represent a complete covering of the peninsula from a geographical standpoint.

**Q. Are these six peninsula destinations important points?** [fol. 516] **A. Yes.** They are among the most populous towns on the peninsula and are all thriving centers of agricultural districts.

The next series of exhibits which I have prepared, commencing with Exhibit No. 17, are sketch map exhibits with explanations set forth on the exhibit itself.

These exhibits run 17, 18, 19, 20, 21, and 22, and I think if I explain one that will cover all of them.

Taking the first one. He have Chicago, Ill., to Dover, Del. We show first the Pennsylvania Railroad haul, 847 miles. Then we show the typical route via—that would have to be shipped in order to put Hagerstown in as a transit point without back-haul, and on that we show the amount of the haul which the Pennsylvania Railroad would get under such an arrangement. In other words, under the normal route haul the Pennsylvania Railroad handles it for 847 miles. Under the sought route the Pennsylvania Railroad gets a 100-mile haul. Out of the normal route there would be no interchange with other railroads. Under the sought route you have interchanges at—two interchanges, and the sought interchanges to additional intermediate lines, namely, the Western Maryland and the C. & O. The total mileage via sought route, 1,196, or 200 miles greater than the normal route.

(Exhibits Nos. 17, 18, 19, 20, 21, and 22, Witness Heimert, marked for Identification.)

The Witness: Now, that explanation I believe will suffice [fol. 517] to show the other exhibits.

There are different origin points, different destination points, but they are all substantially along the same lines, and they portray the situation with respect to typical points of origin in Central territory, typical points of destination on the Pennsylvania Railroad.

By Mr. Eshelman:

Q. And they are made up, are they, of lines named as defendants?

A. Yes, sir. They are. They show what would occur if what was sought herein would be granted.

Q. Now, will you explain your next exhibit, which will be No. 23.

(Exhibit No. 23, Witness Heimert, marked for identification.)

A. Exhibit No. 23. This shows the reshipping rate on grain from Chicago to New York and other North Atlantic ports since 1910, comparing such rates with first and sixth class rates.

The purpose of this exhibit is to show what I believe is common knowledge, namely, that the rates on grain and grain products and by-products in Official territory are among the lowest rates they have. They have not been increased in the same measure as the class rates generally, and the class rates in Official territory are a very important basis for the rates on a great number of commodities.

Exam. Berry: How do they compare with the rates from [fol. 518] Western territory?

The Witness: I have not made a recent comparison, Your Honor. They are very low, that is about all that I can say about that.

By Exam. Berry:

Q. Are they low compared to the western territory rates?

A. In the Western territory you have got a little different situation. There the Commission, 17000, Part 7, saw fit to establish a scheme of proportional rates, say, from Omaha to Chicago, Kansas City, St. Louis.

Q. You have the same rate-break principle there that you have at Chicago and St. Louis?

A. Yes, but our rates, however, from Chicago to the East are through with the use of transit. In the Western territory you do not have these through rates, but you have a series of proportional factors. Of course, if you compare a rate from Kansas City to St. Louis, mile for mile, with a rate in our territory the western rate may be lower, but if you compare the through charge from the country station to the destination I think the situation would be about the same as in our territory, although I will have to admit I have not made a recent check of that.

This exhibit shows that the reshipping grain rate from Chicago to New York, which is the basis for the rate not only to North Atlantic ports but to interior destinations, has [fol. 519] increased 62½ percent over the rate which was in effect in 1910. The first class rates in that period were increased 122.7 percent, and the sixth class rate 84 percent. The situation through Philadelphia to Baltimore is quite parallel with that from Chicago to New York.

Q. Have you any other exhibits?

A. Exhibit No. 24 is a statement showing what happened to the other classes since 1914, or before the series of horizontal rate increases took place in Official territory, and that indicates that the increase, comparing the increases shown in Exhibit 24 with the increase on grain in Exhibit 23, it shows clearly that the increase on grain was substantially less than on any of the first six classes in Official territory.

(Exhibit No. 24, Witness Heimert, for identification.)

The Witness: Exhibit No. 25 compares the increase on grain as developed in Exhibit No. 23 with the increases which have been made since 1914, or prior to the 5 percent advance, on a number of other important commodities which move in volume within Official territory. It will be noted that the increase on grain is the smallest of any of these commodities, compares with an increase of 108 percent on iron and steel articles, 110 percent on salted meats, and so on.

(Exhibit No. 25, Witness Heimert, marked for identification.)

[fol. 520] Mr. Eshelman: I think that is self-explanatory.

The Witness: Yes, sir.

By Mr. Eshelman:

Q. Does that conclude your exhibits?

A. That concludes my exhibits and the supplemental statement in connection therewith.

Mr. Eshelman: Mr. Examiner, from this point we proceed by another witness, so that is all I have with this one.

Exam. Berry: Off the record.

(Discussion off the record.)

Exam. Berry: On the record.

Mr. Eshelman: I am just going to ask one question:

By Mr. Esherman:

Q. If you know, Mr. Heimert, whether the measures of the rates, Chicago to New York, have at all been affected by water competition in the past, or has water competition, do you know whether that has ever affected reductions for the failure to make greater increases?

A. Oh, yes. I think that a case in point is the voluntary reduction of  $5\frac{1}{2}$  cents which we made. That was clearly due to water competition.

By Mr. Cross:

Q. That is the grain rate?

A. Yes, sir; on the grain rate, Mr. Cross.

Mr. Eshelman: Thank you. That is all I have.

Exam. Berry: Are the rates in Official territory based upon a distance scale?

The Witness: The grain rate?

[fol. 521] Exam. Berry: Yes.

The Witness: No.

Exam. Berry: They are not?

The Witness: No.

By Mr. Eshelman:

Q. Do they more nearly approximate the old Graham formula; that is to say, with perhaps a great many variations they nevertheless rely on the Chicago-New York rate as the base?

A. Yes. Your eastbound grain rates are made on the grouping principle, while your groups were not coincident

with the class grouping as a Graham formula; they follow the general pattern of that adjustment.

Mr. Eshelman: Mr. Examiner, I would like to offer those exhibits in evidence. Those are Exhibits Nos. 6 to 25, both inclusive.

Exam. Berry: They will be accepted.

(Exhibits Nos. 6 to 25, inclusive, Witness Heimert, received in evidence.)

Exam. Berry: Is there any cross-examination?

Mr. Hillyer: There are no questions from me, representing the complainant. Make a note of that.

Exam. Berry. You are excused.

(Witness excused.)

Exam. Berry: Call your next witness.

Mr. Cross: I will call Mr. Beggs.

[fol. 522] R. J. BEGGS, being first duly sworn, testified as follows:

Mr. Cross: Mr. Examiner, Mr. Beggs' testimony, as Mr. Eshelman indicated, will deal with the theory on which complainant's case is based and the practical operation of that theory.

Exam. Berry: What is that theory?

Mr. Eshelman: We hope to explain that in the course of our case.

Exam. Berry: As I understand, the theory of the case—maybe I am wrong—as I understand the theory of the case, he says he is entitled to reasonably through rates and joint routes to destinations on the Pennsylvania Railroad.

Mr. Cross: So that he can have transit.

Exam. Berry: With transit, yes, and he has transit at the present time but does not have the through routes and rates to those points but he has it to other points.

Mr. Cross: We understand the justification advanced for his through rate is that he wants transit, and we will show that transit is an incident of through rates and not a basis for their establishment.



## Direct examination.

By Mr. Cross:

Q. Will you state your name.

A. R. J. Beggs.

Q. Mr. Beggs, what is your position with the Baltimore &amp; Ohio Railway?

[fol. 523] A. My position is assistant to freight traffic manager at Baltimore, Md.

Q. Will you briefly describe the principles upon which transit has been granted.

A. The general principle under which transit is granted is to give a transit operator located at some intermediate point the benefit of the same rates, rules and regulations as received by a shipper of like commodities situated in the origin territory or at the point of origin of the raw material and shipping his product to the same destination territory. However, it is not the purpose or the principle under which transit is accorded to give a transit operator greater service than given to the direct shipper. In other words, if a transit point is so situated as to require an out-of-route haul or a back haul a reasonable charge is made for that service over and above the charge paid by the direct shipper from and to the same points and over the same route.

Pursuant to these principles, the transit tariffs of the Baltimore and Ohio, for example, require that the milling point must be located at a point on the direct line from origin to destination if that point is to enjoy the most favorable charge for the stop-off and milling privilege. When the geographical location is such as to involve an out-of-route or back haul, it is the practice to make an extra charge for [fol. 524] the service of handling to and from a point on the direct line. Thus, Hagerstown, Md., on the B. & O., is located on a branch line extending from Weverton, Md., 23.8 miles and, therefore, additional charge over that which would apply if the mill were located at Weverton is made.

Exhibit 26 is an excerpt of pertinent items of B. & O. Railroad tariff, I. C. C. 23273, rules governing milling, mixing, malting and storage in transit of grain and grain products at Hagerstown, Md., and other points.

(Exhibit No. 26, Witness Beggs, marked for identification.)

**The Witness:** The first reproduced item is from page 15 of the tariff and sets forth the general provisions under which transit applies at points located directly intermediate to final destination upon established routes over which the through rates apply. The transit charge at such points on the direct line is one-half cent per 100 pounds. Where mills located at points off the direct line are given the opportunity to engage in transit practices, it has been customary to make an extra charge for the additional service. Hagerstown, Md., on the B. & O. Railroad is so situated.

Items 185 to 445 indicate that the charge at Hagerstown, when shipments are destined to B. & O. Railroad points east of Hagerstown to New York City, inclusive, and to points on connecting railroads, such as R. E. & P., Southern [fol. 525] Railway, M. & P. Railroad and W. & O. D. is 3¼ cents per 100 pounds, which is added to the rate from point of origin to destination.

At this point attention is directed to Rule 20, page 31, on the exhibit which states a very important prerequisite to the granting of transit privilege on grain and grain products at any point on the Baltimore and Ohio-Eastern Lines. Under that rule, transit at points east of the western termini, meaning Pittsburgh, Pa., and Wheeling, W. Va., is only allowed when the inbound commodities originate at points on the termini and west thereof, and when from connecting lines only when delivered to our road at points west of the termini. The reason for this requirement is plain and lies in the fact that the granting of a transit privilege entails out-of-pocket expenses greater than the nominal charge of one-half cent per 100 pounds charged at points on the direct line. To partially compensate for the expense the railroad naturally must receive a reasonably long road haul on the inbound commodity. The reduction of such routes by short hauling necessarily reduces the revenue out of which this expense is met and to that extent makes the accordance of the privilege less economically justifiable.

**Exam. Berry:** Isn't that rather argument for your brief than testimony from this witness?

**Mr. Eshelman:** These are questions of fact we want in [fol. 526] there, Mr. Examiner.

**Exam. Berry:** He is telling us what we ought to do and what is advisable.

Mr. Eshelman: Well, as to that, of course, you understand I was not talking about that.

Exam. Berry: Go ahead.

By Mr. Cross:

Q. What is your next exhibit?

Exam. Berry: So far as your rules are concerned, we have got them right here before us.

Mr. Eshelman: Yes, but—well, I think we can understand that that is the witness' opinion, not attempting to supersede the Commission's jurisdiction on making its conclusion.

A. On Exhibit 27, which is an excerpt of certain items from B. & O. Railroad I. C. C. 23273 covering transit privilege on grain and grain products at Winchester, Va. This point is located on a branch line extending south from Harpers Ferry, W. Va., distance 31.7 miles. When the product is returned north and east via Harpers Ferry the transit charge is 3½ cents per 100 pounds, the same as applied at Hagerstown.

(Exhibit No. 27, Witness Beggs, Marked for Identification.)

Exam. Berry: You understand that the complainant here is not contending that you are not justified in charging, making a charge for an additional line-haul. He is not making any such contention as that.

[fol. 527] Mr. Cross: No, sir; but we are showing that he is situated precisely similarly to these various other operators.

Exam. Berry: He is asking now for transit on a through route on one which is directly intermediate.

Mr. Cross: Yes, for the purpose of securing transit.

Exam. Berry: He has already got the transit now. He wants the through route.

Mr. Cross: No, sir; he has not got the transit, has he?

Exam. Berry: He has transit on both.

Mr. Cross: Except—

Exam. Berry: On out-of-line haul. Now he is asking to have out-of-line haul eliminated by the prescription of another route, and leave the transit charge identically as it is today. He is not asking for any change in it.

Mr. Cross: Well, he in effect is, Mr. Examiner, because he is asking for transit to points which today he has to pay the out-of-route haul.

Mr. Hillyer: No, you got that wrong.

Exam. Berry: The question is whether he is entitled to have a through route prescribed to points on the Pennsylvania Railroad at the joint rate, and he has transit today at a point which would be directly intermediate on the routes that he is asking for, and he is not asking for any change in transit privilege, one way or the other, as I understand it.

Mr. Eshelman: Mr. Examiner, if you permit me to inter-[fol. 528] jeet I think maybe counsel and yourself are not together. A good many of these traffic men talk about transit, meaning as to whether it is available. Now, it is true that there is a transit privilege or transit arrangement, but at the same time it is not available under the tariff today except in certain cases.

Exam. Berry: That is right.

Mr. Eshelman: So I think counsel, when he says that there is not transit there by these routes, means that complainant wants an arrangement whereby he can transit on such a route which he cannot today. It may be true, as you indicate at the present time the reason he cannot do it is for lack of route, but it is also true what counsel indicates what he is asking is opportunity to—

Exam. Berry: No. What he is asking is—what he is asking is a through route to make it directly intermediate.

Mr. Eshelman: I won't argue with you. I think it comes to the same thing.

Exam. Berry: So as to wipe out the back-haul charge. Isn't that what you are asking for?

Mr. Hillyer: That is it.

Mr. Eshelman: I think we understand one another.

Exam. Berry: All right. Go ahead.

Mr. Cross: I think his testimony will show.

By Mr. Cross:

Q. What is your next exhibit?

[fol. 529] A. Exhibit No. 28 is an excerpt from B. & O. L. C. C. 23403 covering transit privilege on lumber and forest products at points on the B. & O. Railroad. The practice here when the mill is so situated as to require an out-of-route or back haul is to make extra charge over that appli-

cable when the mill is located on the direct line between origin and destination.

(Exhibit No. 28, Witness Beggs, marked for identification.)

Q. You have now dealt with the Baltimore and Ohio tariff provisions with respect to transit and the general practice of applying a charge to compensate for out-of-route service. In your testimony you mentioned that transit is only available upon established routes from initial point of shipment to final destination. Would you state whether such routes are established for the purpose of according transit or whether transit is simply an incident of the routes? In other words, which is the dog and which is the tail?

A. I have never known of a route being established for the purpose of according transit at some point upon it. Most decidedly transit is simply an incident of existing routes and in this respect is precisely similar to other arrangements granted by railroads for effecting the stopping in transit short of final destination of the product. I have in mind diversion and reconsignment arrangements and stop-off for partial loading or unloading of carload freight. [fol. 530] Indeed, the reasons for recognizing that a party's wish for transit is no justification for the establishment of a through route are even more compelling than the reasons for recognizing that a party's wish for reconsignment or stop-off is no justification for the establishment of a through route.

Exam. Berry: Aren't we getting into argument now?

Mr. Cross: No, sir. These are two analogies.

Exam. Berry: A witness is supposed to testify to facts, and if this witness is giving us any facts I cannot recognize them. That is, just now it is purely argument.

Mr. Cross: He is stating for what purpose stop-off and reconsignment are established, that they are also incidental to through routes, that a through route is not established—

Exam. Berry: You know the Commission has some information and knowledge as to the transit business.

Mr. Cross: These are two analogies, Mr. Examiner, which I think are precisely the same.

Exam. Berry: All right. It seems to me we are going very far afield.

Mr. Cross: You understand, Mr. Examiner, when we received this complaint for defense it had tremendous scope, covered all of the East, and all of New England.

Exam. Berry: Can't you trim your defense now to the case made on direct?

Mr. Cross: No, sir; not without revising our entire testimony [fol. 531] money.

Exam. Berry: Well, why not revise it?

Mr. Cross: But this runs as much to the two sought routes as it did to the routes covering the whole destination territory.

Exam. Berry: Go ahead.

The Witness: For milling in transit is the most liberal of these arrangements.

To give some idea of the liberality of the arrangements under which transit is accomplished, I would point out that the carrier places the car on private siding for unloading, allows period of 12 months within which the inbound commodity may be converted or prepared for reshipment, and then furnishes one or more cars for reforwarding of the outbound commodity. For all of this service a charge of one-half cent per 100 pounds is charged in excess of the through rate from point of origin to final destination, when the mill is located at a point on the direct route. Compare this charge with the charge of \$6.93 per car for diversion or reconsignment. The matter of free time allowed under transit is another element of importance.

Exam. Berry: Are we concerned with that here? Doesn't that same situation exist at every transit point?

Mr. Cross: Yes, sir; but the through routes through those transit points were not established for the purpose of [fol. 532] affording transit.

Mr. Craig: Mr. Examiner, I would like to ask Mr. Cross if he thinks there is any question here of the reasonableness of the transit rules.

Mr. Cross: No, they are not in issue.

Mr. Craig: Then, what is the purpose of this?

Mr. Cross: I thought I would try to explain, Mr. Examiner, as we understand the complaint the complainant is asking for the establishment of through routes on which he would then secure transit, and the purpose for which the basis for his request for the establishment of the through route is that he wants the transit privilege.



Exam. Berry: Yes.

Mr. Cross: Now we are showing that that is making the tail wag the dog; that stop-off is not used as a foundation for the establishment of through routes; that reconsignment is not a foundation for that.

Exam. Berry: Well, isn't that all argument?

Mr. Cross: No, sir; I don't think so.

Exam. Berry: Where do your facts come in?

Mr. Cross: Because those are analogous.

Exam. Berry: Isn't it a question for the Commission to determine whether they are justified in prescribing the through routes?

Mr. Cross: Certainly, that is true, but I think that the [fol. 533] basis upon which the request is based is also important, ~~or~~ they ask—because of their being necessary to afford adequate transportation.

Exam. Berry: But you are not showing anything in regard to that. You are telling us what the cost of transit and privileges at other places which are identical are.

Mr. Cross: We are coming to that.

Exam. Berry: Go ahead.

Mr. Craig: He is going further than that. He is telling how liberal the B. & O. is in their transit rules, which, as I see it, has no part in this proceeding at all. There is no question about whether the rules are liberal or not, or whether legal or lawful here.

Mr. Cross: I am afraid Mr. Craig has misunderstood it. We have used simply the B. & O. tariffs as being representative of transit charges in this territory.

Mr. Craig: And your witness just said to show the liberality of the rule. He used that word.

Mr. Cross: That is exactly right, and he is now showing it. He is showing what service is performed under transit as against stop-off and reconsignment.

Mr. Hillyer: Mr. Examiner, I think that everything that has been offered here so far is open to the objection that it is irrelevant to the issues raised by this complaint. I have purposely sat here and have not objected to any of it [fol. 534] because I do not think it hurt our case any. I do not think it does it any good, but I was afraid of getting into an altercation here by objecting to it, by prolonging the thing; but I do not want the record to think that I am sitting idly by here and not knowing what is going on.

I would like to have the record show that complainant

contends that all the testimony of this witness and the previous witness is irrelevant to the issues raised in our complaint.

Exam. Berry: The Examiner is inclined to agree with you to a very large extent, a very large part of it is irrelevant.

Mr. Eshelman: I hope you will reserve your ruling until we get the case in.

Exam. Berry: I do not want, because that is my view, to preclude the defendants from putting in their case.

Mr. Hillyer: Yes, that is the way I feel.

Mr. Cross: I think you will appreciate, Mr. Examiner, we have been put in this position by the fact that we did not know until today to what extent this very general complaint was going to be limited.

Exam. Berry: I realize that.

Mr. Eshelman: He is letting you put it in anyway.

Mr. Cross: But I want him to understand our reasons for having a rather broad defense.

The Witness: On transit shipments when the car is first placed at the mill 48 hours free time is allowed and again [fol. 535] when the reshipment is made in one or more cars another period of 48 hours free time is allowed. Under diversion or reconsignment rules when a car is entitled to the privilege at the through rate from point of origin to destination the period of free time at the diversion point is 24 hours.

Rules and charges covering diversion or reconsignment of merchandise carload freight are published in B. & O. Railroad tariff I. C. C. 23409. Might say that these rules are the same on all the eastern railroads and are the outcome of investigation by the Interstate Commerce Commission in I. and S. Docket No. 1050, recorded at 47 I. C. C. 590.

These rules permit diversion and reconsignment only when no back haul is involved, except when carriers for competitive reasons meet direct line operations of other lines and such exceptions are specifically provided for. The diversion rules require that where back hauls are involved combination rates will be applied. Thus, at Hagerstown, B. & O. Railroad, no diversion or reconsignment can be made except at combination rates when Hagerstown is not directly intermediate to the new destination.

Under these rules if a car has been placed for unloading on private siding at billed destination and is forwarded therefrom without being unloaded to a point outside of the switching limits, it will be subject to the published tariff rates applicable on a shipment terminating at and of a ship- [fol. 536] ment originating at the point of diversion or reconsignment.

There is another tariff covering the diversion or reconsignment of fresh fruits and vegetables, which is more liberal than that applying to merchandise or dead freight. These rules on fruits and vegetables permit reconsignment after cars are placed at points of destinations on either public or private sidings, and if the reforwarding involves a back haul a scale of rates is provided in addition to the regular reconsignment charge of \$6.93 per car after placement at first destination. This back-haul charge for distances 60 miles and over 30 miles at points in eastern territory is 4½ cents. This compares with the milling in transit charge at Hagerstown of 3¼ cents for back haul of 47.6 miles. It will thus be observed that the reconsignment arrangement on fruits and vegetables follows the established routes and is, therefore, incidental thereto.

The other arrangement that I referred to as being in the category with milling in transit is the stop-off privilege for partial loading or unloading of carload freight. These rules are applicable to many articles of dead freight including most manufactured articles shipped in packages.

My next exhibit, No. 29, is an excerpt from B. & O. Railroad tariff I. C. C. 23391, and shows several of the rules that govern generally and also the rule which permits stop-off of cars at Hagerstown, Md., on the B. & O. Railroad.

[fol. 537] (Exhibit No. 29, Witness Beggs, marked for identification.)

The Witness: This arrangement, like milling in transit and diversion or reconsignment, is predicated on the stop-off point being located directly intermediate on the route from original point of shipment to final destination, with some exceptions due to competitive reasons. However, there is a substantial difference in the amount of service performed on stop-off cars as compared with milling in transit. On stop-offs the rate applicable from the original point of shipment to the final destination is charged on the

entire weight of the shipment, although the actual weight beyond the stop-off point of necessity is less and often 50 percent or less than the weight on which charges are collected through to final destination. Under milling in transit there is only a small shrinkage which is not reforwarded at the balance of the through rate to final destination. Attention is directed to the fact that the stop-off arrangement, like diversion or reconsignment and milling in transit, is a privilege granted by the carriers for the accommodation of shippers, and necessarily is incident to transportation under established through rates and routes. The charge for stop-off is the same as for reconsignment after placement of \$6.93 per car, except where additional service is required as at Hagerstown. Thus the charge at that point is \$11 per car in addition to the regular charge of \$6.93. [fol. 538] Q. Is this stop-off arrangement used at Hagerstown?

A. Yes, it is actively used and I have not heard any request that it be by-passed through the establishment of new routes. I cannot emphasize too strongly that the stop-off privilege like transit is wholly incidental to established routes and that the desire to accord such privileges or to have existing privileges modified does not constitute a basis for the establishment of new routes.

Q. I will now call your attention to the fact that section 15 of the Act was amended by the Transportation Act of 1940 to provide to the general effect that the Commission shall not require any carrier to embrace in a through route substantially less than the entire length of its railroad which lies between termini of a proposed through route unless the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economical transportation. Will you now deal with this feature?

A. My testimony will now show affirmatively that the existing through routes from representative origins to representative destinations on the B. & O. Railroad are adequate and at least as efficient and economical as routes from such origins to such destinations via Western Maryland Railway and Hagerstown.

My next exhibit, No. 30, is a statement showing typical routes on grain and grain products from Chicago, Ill., to destinations on the B. & O. Railroad, of which University,

[fol. 539] D. C., Aberdeen, Md., and Sykesville, Md., are representative.

(Exhibit No. 30, Witness Beggs, marked for identification.)

Exam. Berry: Can't you eliminate that exhibit? He is not asking for anything on the B. & O. You are just showing how efficient your present routes of the B. & O. are, and what other routes may be on the B. & O.

Mr. Cross: This is leading up, Mr. Examiner, to showing the operation of the theory on which his case is based. I think we can eliminate the description that goes with the exhibit.

Exam. Berry: I understood you to ask this witness here, and I understood him to say that his testimony was going to the question as to whether the present routes were adequate, economical, and efficient, and that the other routes would not be any more so to destinations on the Baltimore and Ohio.

Mr. Cross: Of course, that issue has now been eliminated from the case.

Exam. Berry: Well, why not eliminate the testimony in regard to it.

Mr. Cross: Because I say it is the foundation for our showing as to what the theory will do in general application. Now, we are going to show what it is going to do if you will apply this theory.

Exam. Berry: I must confess my inability to follow [fol. 540] your reasoning, but go ahead.

Mr. Cross: I think we can eliminate some of the description in connection with these exhibits, because they are self-explanatory.

Exam. Berry: Go ahead. All right.

By Mr. Cross:

Q. Go ahead.

A. This exhibit shows routes from Chicago via Baltimore and Ohio, C. I. & L., Erie, G. T., Pennsylvania Railroad, Wabash, C. S. S. & S. B., N. Y. C., N. Y. C. & St. L., C. M. St. P. & P. and C. & O., as origin lines, and these routes use two and not exceeding three lines, and in every instance the B. & O. Railroad receives a haul from Pittsburgh, Pa., Wheeling, W. Va., or west thereof. There are

no established routes from Chicago via connecting lines that do not give the B. & O. Railroad a haul at least from Pittsburgh or Wheeling. There are 46 routes listed on this exhibit.

My exhibit No. 31 is a statement similar to my preceding exhibit, and sets forth the routes from Decatur, Ill., to University, Baltimore, Aberdeen, and Sykesville. The origin lines are the B. & O., Wabash, Pennsylvania Railroad, Illinois Central, and Illinois Terminal. There are 33 routes listed on the exhibit and in every case the B. & O. would receive a haul from Pittsburgh, Wheeling, or a point west thereof.

(Exhibit No. 31, Witness Beggs, marked for identification.)

[fol. 541] The Witness: My next exhibit, No. 32, is similar to the preceding two exhibits and shows typical routes on grain and grain products from Peoria, Ill., to University, Baltimore, Aberdeen, and Sykesville. The origin lines at Peoria the P.R.R., N.Y.C., N.Y.C.&St.L., Alton, I.C., Illinois Terminal, C. B. & Q., C.I. & M., C.R.I. & P., T.P. & W., and C. & N.W. Forty-nine routes are shown, and as in the preceding exhibits covering Chicago and Decatur, the B. & O. Railroad would receive a haul from Pittsburgh, Wheeling or a point west thereof.

My next exhibit, No. 33, shows mileages via typical working routes from Chicago, Peoria, and Decatur to University, Baltimore, Sykesville, and Aberdeen, together with information as to number of interchanges required in each instance.

(Exhibits Nos. 32 and 33, Witness Beggs, Marked for Identification.)

The Witness: It will be noted that there are numerous routes available that entail no interchange and not exceeding one interchange. Certainly, with such multitude of routes that are not unduly circuitous and entailing either no interchange or only one it cannot be said that other routes which would break the hauls up into smaller segments and require additional interchanges are needed in the language of the amendment of 1940 to provide adequate and more efficient or more economical transportation.



[fol. 542] Q. Now, have you a series of sketches which show the practical operation of the theory upon which we understand the case is based?

A. Yes, I have a series of sketches consisting of eight exhibits, that is, Exhibits Nos. 34, 35, 36, 37, 38, 39, 40, and 41—Exhibits 34 to 41, inclusive.

Q. You can cover that series by an explanation of the first exhibit, can you not?

A. Yes. I think one explanation will suffice.

(Exhibits Nos. 34 to 41, Inclusive, Witness Beggs, Marked for Identification.)

A. The first one of this series of exhibits is No. 34, and shows the route from Chicago to University, D. C., via Wabash Railroad, Toledo, Ohio, and Baltimore and Ohio, via which the B. & O. haul is 584 miles. Contrasted with this route is shown route via Wabash Railroad, Toledo, Ohio, W. & L. E., Pittsburgh Junction, Ohio, P. & W. Va. to Connellsville, Pa., W. M. Railway to Hagerstown, Md., thence B. & O. Railroad to University. The B. & O. haul is reduced from 584 to 74 miles, or 87 percent. Via the normal route via Wabash Railroad-Toledo and B. & O. one interchange is required compared to four via the stated route.

By Mr. Cross:

Q. And the stated route is a route which would make Hagerstown directly intermediate?

A. Yes, it would.

[fol. 543] Mr. Hillyer: Mr. Cross, did I understand you to say you are offering this exhibit to show what this complainant was asking for?

Mr. Cross: No. I said to show the practical effect of applying the theory to other destinations.

Mr. Hillyer: Of course, you know we are not asking for any such thing.

Mr. Cross: I understand that.

Mr. Hillyer: All right.

Mr. Cross: At least I understand you are asking for something like this to a different destination.

Mr. Hillyer: No, we are not asking for anything like this. Please let the record so show.

Mr. Cross: What is your next exhibit, Mr. Beggs.

The Witness. My next exhibit, 42, depicts a route from Chicago to Strasburg, Va., via Pennsylvania Railroad, Wheeling, W. Va., Baltimore and Ohio Railroad to Frederick, Md., the transit point, thence to Strasburg, Va., via Harpers Ferry, W. Va. Via this route, which give the B. & O. Railroad a haul from Wheeling, W. Va., distance of 384.4 miles, there would be a back haul transit charge of  $3\frac{1}{4}$  cents per 100 pounds in addition to the through rate from Chicago to Strasburg.

(Exhibit No. 42, Witness Beggs, marked for Identification.)

[fol. 544] The Witness: If the theory of complainant should prevail then there would be nothing to prevent shipper from insisting upon the establishment of a route via Pennsylvania Railroad from Chicago to Frederick, Md., thence B. & O. Railroad to Strasburg, Va., which would give the B. & O. Railroad but 76.3 miles haul in conjunction with the transit it grants.

Q. That exhibit shows how the present arrangements would be disturbed at Frederick?

A. Yes, it does.

Q. Now, your Exhibit No. 43.

(Exhibit No. 43, Witness Beggs, Marked for Identification.)

A. Exhibit 43 is a sketch depicting route from Chicago, Ill., to Richmond, Va., via B. & O. Railroad Potomac Yard, Va., and R. F. & P. Railroad, with transit arrangement at Charles Town, W. Va. Via this route there is a backhaul from Harpers Ferry to Charles Town and return of 20.4 miles for which transit charge of  $3\frac{1}{4}$  cents per 100 pounds is charged. It is possible to make Charles Town intermediate between Chicago and Richmond via route of New York Central from Chicago to Cincinnati, Norfolk & Western Railway Cincinnati to Shenandoah Junction, W. Va., via Roanoke, Va., and Charles Town, thence Baltimore & Ohio Railroad to Potomac Yard and R. F. & P. to Richmond. This again illustrates the fallacy of establishing routes to accommodate the location of a transit mill.

[fol. 545] Q. What is your last exhibit?

A. My next and last exhibit, No. 44, is a sketch depicting the route from Chicago to Aberdeen, Md., via C. & O. Rail-

way, Cincinnati, Ohio, and Baltimore & Ohio Railroad with stop-off at Winchester, Va., for transit.

(Exhibit No. 44, Witness Beggs, Marked for Identification.)

The Witness: There would be a backhaul from Harpers Ferry, W. Va., to Winchester and return of 62.4 miles, for which a transit charge of  $3\frac{1}{4}$  cents per 100 pounds would be charged. In order to make Winchester intermediate to Aberdeen without backhaul a route could be devised via C. & O. Railway from Chicago to Staunton, Va., via Cincinnati, thence Valley Railroad of Virginia to Harrisonburg, Va., thence Southern Railway to Strasburg Junction, Va., thence B. & O. Railroad to Aberdeen, via Winchester. Such a route would deprive the B. & O. Railroad of its long haul from Cincinnati of 653.7 miles and substitute a haul from Strasburg Junction of 161 miles.

There could be examples without number submitted to show what would happen to the established routes for handling carload freight between carriers if the theory advanced by the complainants should be recognized as proper.

Q. Now, Mr. Cross, on that last exhibit, how many interchanges would be involved in order to make Winchester intermediate?

[fol. 546] A. Four interchanges would be involved to make Winchester intermediate between Chicago and Aberdeen.

Mr. Cross: I wish to offer, Mr. Examiner, Defendants' Exhibits 26 to 44.

Exam. Berry: They will be accepted.

(Exhibit Nos. 26 to 44, Inclusive, Witness Beggs, Received In Evidence.)

Mr. Cross: That concludes Mr. Beggs' testimony.

Exam. Berry: Is there any cross-examination?

Mr. Hillyer: We have no questions.

Exam. Berry: The witness is excused.

(Witness excused.)

Exam. Berry: We will take a recess.

(There was a short recess taken.)

Exam. Berry: Let us resume, gentlemen. Call your next witness.

\* H. B. THORNTON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Eshelman:

Q. Will you give your name to the Reporter, Mr. Thornton.

A. H. B. Thornton, commerce agent, Pennsylvania Railroad, Room 431 Broad Street Station, Philadelphia, Pa.

Q. How long have you been engaged in freight traffic work?

A. I entered the service of the Pennsylvania Railroad [fol. 547] Company in freight traffic August 4, 1916.

Q. And you have been continuously engaged in freight traffic work?

A. Yes, sir; for the past 23 years, exclusively rate construction and commerce work.

Q. Have you prepared exhibits and testimony with respect to this case?

A. I have.

Q. Before proceeding with that, will you state whether you have made any study on the average inbound weight and the average outbound weight of complainant's shipments over the P. R. R. and out over the P. R. R.?

A. Yes, sir.

Inbound for the three months, May, June, and July, 1941, 217 cars inbound, average weight 66,044 pounds; outbound six months, December, 1940, to May, 1941, both inclusive, 383 cars, average weight 49,200 pounds.

Q. Taking up your exhibits, is the copy which you have given to the Reporter and the copy which you have given to the Examiner numbered in order, beginning with No. 45?

A. Numbered in order, beginning at No. 45 and concluding at No. 65.

Mr. Eshelman: If we may then follow the same procedure, Mr. Examiner.

Exam. Berry: Yes, Mr. Eshelman.

[fol. 548] (Exhibits Nos. 45 to 65, Inclusive, Witness Thornton, Marked for Identification)

By Mr. Eshelman:

Q. When was the transit arrangement on grain and its products originally established at Hagerstown, Md., by the P. R. R.?

A. As Exhibit No. 45 will show, the arrangement became effective May 5, 1921, in P. R. R. G. O. I. C. C. No. 11227.

Q. Do the points shown on this exhibit as origin territory and destinations present a representative picture of the situation including its historical development and present status?

A. They do.

Q. And as to the changes in the out-of-route or back-haul charges, does the exhibit present a concise summary of the changes?

A. Yes. All of the changes in these charges between the points shown are included in the exhibit.

The tariff effective May 5, 1921, carried both the feed-mixing and milling-in-transit provisions. The exhibit traces the feed-mixing situation through from its inception to the present date. The present milling-in-transit arrangements, quite generally, are the same as those applicable to feed-mixing.

As shown in the last item on sheet 1 of this exhibit, in so far as the feed-mixing tariff is concerned, provision was [fol. 549] made for the absorption of W. M. switching in and out, effective October 20, 1939.

Similar provision was made in the milling-in-transit tariff applicable at Hagerstown, and the same arrangement is covered by Supplement No. 5 to P. R. R. I. C. C. No. 2220, effective October 20, 1939.

Q. Will you refer to the first item on page 2 of this exhibit. Was the expiration date also eliminated from the switching absorption provision in the milling-in-transit tariff at Hagerstown on or about the same date as this elimination became effective in Supplement No. 16 to I. C. C. 2117, the then effective feed-mixing tariff?

A. Yes. It was eliminated by Supplement No. 14 to P. R. R. I. C. C. No. 2220, effective November 18, 1940.

Q. What does the exhibit show with relation to the out-of-route or back-haul charges?

A. That from origins west of Pittsburgh the charge is at present the same as when originally established effective May 5, 1921, and that from the other origin territories shown, Pittsburgh Local, Buffalo Local, and east of Pittsburgh, the charge is now substantially lower than when originally established. It also shows that the origin terri-

tory has been increased, as illustrated by the addition of Buffalo beyond (ex Canada), effective September 22, 1926.

Q. What else does the exhibit show?

[fol. 550] A. That the absorption of the W. M. switching charge both inbound and outbound is now provided for. The charge is now \$6.93 per car in each direction; thus a total absorption of \$13.86 is made on each complete operation—that is, delivery of the inbound car to the complainant's plant and receipt of the outbound car from the Stickell Company plant.

Q. Do you have any comment to make in connection with this switching absorption?

A. Yes. It was a voluntary concession that resulted in a substantial saving to the complainant.

Q. Why do you regard this as voluntary?

A. Because the complainant in this proceeding in Docket No. 18452 sought to have this very absorption prescribed. In two decisions the Commission declined to order The Pennsylvania Railroad to make these absorptions.

Q. Can you furnish the citations?

A. 151 I. C. C. 364, decided January 25, 1929, and 156 I. C. C. 373, decided July 9, 1929.

Q. Will you please give specific reference to the present tariff granting transit privileges on grain mixed into feed at Hagerstown, Md., when the inbound and outbound movements are via the P. R. R.?

A. P. R. R. tariff I. C. C. No. 2442.

Q. Have you prepared an exhibit covering application of this tariff?

[fol. 551] A. Yes, with particular reference to the back-haul or out-of-route charge provisions it contains. It is exhibit No. 46.

Q. Please explain the exhibit.

A. I must first refer to the provisions of the transit tariff. The tariff provides transit charge of one-half cent per 100 pounds, minimum \$3.96 per car. It also provides that when the transit point, which in the matter under discussion is Hagerstown, Md., is directly intermediate between origin and destination, the charge on the shipment shall be the through rate on the outbound product from point of origin to destination plus transit charge. When an out-of-route or back-haul is involved due to the location of the transit point with reference to the locations of the origin and desti-



nation, there is a scale of rates on a mileage basis provided for such additional movement.

Q. That is a general description of the transit tariff. How about the exhibit?

A. The exhibit shows the exceptions to the general mileage scale basis for the back hauls involved in transit at Hagerstown, Md. The major exception is the charge of 4.5 cents in lieu of the higher charge under the scale, generally 7.5 cents per 100 pounds. The exhibit was prepared on the basis of the exceptions to the general back-haul scale, but wherever some groups are covered by an exception from either an origin or destination standpoint, the remainder [fol. 552] of that line is filled out on the regular scale basis. In the vast majority of cases the back-haul charge is materially lower than the scale.

Q. On page 2 of your preceding Exhibit No. 45 you make reference to two letters from the complainant to the Pennsylvania. With respect to the second one, which asks for the ability to reach certain territory, will you state whether or not that has been provided for since the time of that letter and in connection with that explanation how the Exhibit 46 works, that is, how you apply it to determine that situation.

A. Yes, sir.

The complainant's request, as contained in the second letter on sheet 2, Exhibit No. 45, has since been complied with.

Taking the specific case of grain originating on the Cumberland Valley and destined to a point east of Harrisburg we can find the back-haul charge from Exhibit No. 46 by referring to page No. 1 of that exhibit, section No. 1. We find that the Cumberland Valley is in two groups, No. 53 and No. 54, the bottom group on the righthand side of page 1 of Exhibit No. 46.

Group 54, the lowest end of the Cumberland Valley, runs from Fayetteville, Pa., to Winchester, Va.

Page 2 of Exhibit 46 shows a grouping of the destination territory, and if we are to take Philadelphia as illustrative as a destination we find that that is included in group No. 7. Thus the out-of-route charge from group No. 53 to group [fol. 553] No. 7 is shown on page 5 of the exhibit, and is  $3\frac{1}{4}$  cents per 100 pounds or materially lower than the general charge of  $4\frac{1}{2}$  cents per 100 pounds that I have explained at some length previously.

Further, for convenience in Exhibit 46, page 3, section 3, there is a map of the eastern section of the Pennsylvania Railroad and the origin and destination groups which have the same station index numbers, are blocked off as to the origin and destinations further.

Q. So that by reference to the map and the tabulations that you have there can be ascertained what, if any, back-haul charge is applicable in connection with any of these movements?

A. Yes, sir.

At this point, Mr. Eshelman, it might be well to explain generally if a destination on the Pennsylvania Railroad is a junction point with a connecting line, bears the same charge for movement to that connection as if the destination were right on the P. R. R. tracks at the point.

Q. So far you have discussed feed-mixing in transit. Are there any other grain transit operations in which the complainant engages at Hagerstown, Md.?

A. Yes, milling-in-transit. That is converting grain into flour.

Q. Under what P. R. R. tariff is that operation performed [fol. 554] in transit at Hagerstown, Md.?

A. P. R. R. tariff I. C. C. No. 2220.

Q. What are its provisions?

A. Generally quite similar to those of P. R. R. I. C. C. No. 2442.

Q. Why was your analysis of the feed-mixing tariff, P. R. R. I. C. C. No. 2442, more complete than of the milling-in-transit tariff, P. R. R. I. C. C. No. 220?

A. For two reasons. First, because the tonnage moving under the feed-mixing tariff, I. C. C. No. 2442, is much heavier than that moving under the milling tariff, I. C. C. No. 2220; and, secondly, because the tariffs are quite similar in provisions and a full description of both would, to a very large extent be a repetition.

Q. Where a back haul is involved in connection with transit operations on grain and its products, what is the general method or basis for computing the charges?

A. In addition to the through rate from origin to destination as modified by the generally applicable "three-way" rule and the transit charge, there is also assessed a specific charge in cents per 100 pounds or per ton for the additional service occasioned by such out-of-route or back haul.

**Q.** In general, what are the provisions of the three-way rule?

**A.** It provides that in addition to any and all accessorial charges such as that for the transit service and out-of-route or back-haul charges in cases in which an additional haul is [fol. 555] involved due to the location of the transit point with relation to the origin and destination, that the line haul freight charges shall be settled on the highest of the following three rates:

First, the rate from point of origin to ultimate destination, or, second, the rate from point of origin to transit point, or, third, the rate from the transit point to ultimate destination.

**Q.** Has the Interstate Commerce Commission considered the three-way rule in connection with shipments accorded transit?

**A.** It has, and has approved it. I refer particularly to Docket No. 28378, Diamond Cold Storage Company v. S. A. L. Railway, et al., 241 I. C. C. 607, decided October 8, 1940; and to Docket No. 17000, Part 7, Grain and Grain Products within the Western District and for export, 205 I. C. C. 301, decided October 22, 1934. At page 413 the Commission stated in this particular case: "The rule seems to be a necessary and reasonable transit requirement." Please observe that in this instance the rule was upheld specifically for application on grain and grain products, as it was also in Docket No. 26140.

**Mr. Craig:** Mr. Eshelman, is the witness contending the Commission ordered the three-way rule in?

**The Witness:** I stated the Commission sanctioned it.

**By Mr. Eshelman:**

**Q.** Will you give the other citation.

**A.** Docket No. 26140, Red Star Milling Company v. Aberdeen and Rockfish Railroad Company, et al., decided February 21, 1938, 226 I. C. C. 289 at 291. The three-way rule was also upheld in F. S. A. No. 16599, Transit Rates on Class Traffic, decided May 12, 1937, 222 I. C. C. 355 at 357.

**Q.** Are mileage scales published for out-of-route or back-haul services?

**A.** Yes.

Q. What is the back haul on movements over the P. R. R. with transit at Hagerstown, Md.—that is, on traffic originating west of Marysville, Pa., and terminating east of Harrisburg, Pa.?

A. 149 miles.

Q. What is the out-of-route and back-haul charge for that mileage?

A. 7.5 cents per 100 pounds, as published in Item 160 of P. R. R. tariff I. C. C. No. 2442, covering transit arrangements on feed. This figure of 7.5 cents per 100 pounds is the charge usually applied for back hauls of from 101 to 150 miles on grain given transit in Trunk Line territory.

Q. What is the generally applicable back-haul charge applicable in connection with grain transit, particularly feed-mixing, for such transit operation at Hagerstown, Md.?

A. 4.5 cents per 100 pounds.

Q. That is lower than the scale basis?

A. Substantially lower than the scale basis. The 4.5-cent [fol. 557] charge actually applied is 3 cents per 100 pounds, or 40 percent lower than the mileage scale basis. Stated differently, it is but 60 percent of the mileage scale basis.

Q. Have you prepared an exhibit illustrating the comparative back-haul charge situation at Hagerstown, Md., as contrasted with other feed-mixing and milling-in-transit points on the P. R. R. at which these operations are performed under transit tariff provisions?

A. Yes. Exhibit No. 47, an exhibit of 13 pages, consisting of a titled page and a separate page for each of 12 competitive transit points—

Mr. Hillyer: Just a minute, Mr. Examiner. I have just one question.

He has just finished Exhibit No. 46. Before he goes on to Exhibit No. 47, as I understand Exhibit No. 46 it is an attempt to justify the back-haul charge from Hagerstown to Harrisburg; is that it?

Mr. Eshelman: Well, I would not limit it to that, no. We are trying to make a general showing of the situation, and I think the general theory of our case will show it is all part of one showing and it would not be correct to say that that is the sole reason for putting it in.

The Witness: Yes, Exhibit No. 47, an exhibit of 13 pages, consisting of a title page and a separate page for each of 12 competitive transit points; that is, points at which grain is [fol. 558] milled, or mixed in transit in competition with

Hagerstown, Md. The exhibit is largely self-explanatory. Fifteen representative destinations have been used in each sheet, and for convenience the Hagerstown situation is shown at the left of each sheet, and that prevailing at the competitive transit point at the right of the 12 sheets of the exhibit.

Q. Are the competitive transit points chosen for the purpose of this exhibit representative, in your opinion?

A. Yes. They are all located in the Central and eastern portions of Trunk Line territory on the P. R. R. The sources of grain to be transited and the marketing or sales territories they could hope to reach by reason of their respective locations are the same as the sources of supply and distribution now used and desired by the Hagerstown complainant.

Q. Have you made any summary of this exhibit?

A. I have summarized certain of the data shown on the exhibit. Thus there are 12 competitive milling or mixing points covered by the exhibit. Column F of each sheet shows the excess or out-of-route mileage involved at Hagerstown, and Column H the charge for such out-of-route service. The average out-of-route haul, when transit is performed at Hagerstown, is 148.6 miles, and the charge therefor is 4.5 cents per 100 pounds.

Q. How did you figure your comparisons?

A. On sheets 2 to 13, both inclusive, Column M shows the excess or out-of-route mileage at the other transit points—[fol. 559] Bedford, Pa., etc., and column O of the sheets shows the out-of-route charge at those points when destined to points shown on the exhibit, all 15 of which are uniform throughout. Columns M and O are averaged for each of the 12 transit points. The total for these averages is: Column M or excess mileage 1,222.2 miles, and column O or out-of-route charge 52.87 cents per 100 pounds. Dividing these total figures by 12, the number of transit points competitive with Hagerstown shown on the exhibit, we have average out-of-route mileage for the 12 competitive transit points of 101.85 miles, and average charge therefor 4.41 cents per 100 pounds.

The Hagerstown out-of-route distance is 148.6 miles, and the average charge is 4.5 cents per 100 pounds. For the 12 competitive transit points average out-of-route distance is 101.85 miles, and average charged therefor is 4.41 cents per 100 pounds. To state it somewhat differently, the Hagers-

town out-of-route distance is about 50 percent greater than the average from the 12 competitive transit points, while the Hagerstown charge therefor is but 2 percent greater than the average.

Q. What is the revenue per mill per ton mile at the Hagerstown figures of 148.6 miles and 4.5 cents charge?

A. 6.057 mills.

Q. What is the revenue per mill per ton per mile on the average figures from the 12 competitive transit points, [fol. 560] which figures are 101.85 miles and 4.41 cents per 100 pounds?

A. 8.660 mills.

Q. And what percentage does the mills per ton per mile Hagerstown out-of-route revenue bear to the average figure for the 12 competitive transit points?

A. Hagerstown mills per ton per mile revenue is 69.94 percent of the average mills per ton per mile revenue from the 12 competitive transit points.

Q. You speak of 12 competitive transit points. Are they the only points at which milling or mixing-in-transit are available on the P. R. R. Lines east?

A. No. There are numerous other points at which grain is handled and processed under transit arrangements both on the P. R. R. and other Official territory railroads. The points on the P. R. R. in Trunk Line territory are those covered by P. R. R. tariffs I. C. C. No. 2220 and I. C. C. No. 2442, but the points shown on this exhibit are representative.

Q. Reverting to the 12 points used in the exhibit as typical competitive points subject to a back-haul charge to the 15 destinations shown, is their geographical situation such that the operators at those points could likewise ask for the prescription of through routes which, if prescribed, would eliminate the back-haul charge?

A. It is in nine out of the twelve examples.

Q. Which three points are so located as not to be susceptible to such a complaint as that involved in this case?

A. Elizabethville, Reedsville, and Dillsburg, Pa. These points are located on relatively short branch lines, beyond which on said branches there is no connection with another Trunk Line rail carrier. They would be at a disadvantage.

Q. If the operators at the other nine transit points desired such routes, what would be illustrative routes which, if pre-



scribed, would eliminate the back haul? Explain the situation "alphabetically" as to these nine transit points.

A. Bedford, Pa. The operator at Bedford, Pa., could seek routes via lines beyond, that is, west of the B. & O. or W. M., thence B. & O. or W. M. through Hyndman, Pa., and State Line, Pa., respectively, thence P. R. R.

Cumberland, Md. Cumberland is another interchange point between the P. R. R. and the W. M., so that routes employing the W. M. or its western connections into Cumberland, Md., thence P. R. R. would be comparable to what the Hagerstown operator is seeking here.

Greencastle, Pa. Greencastle, Pa., is located on the Cumberland Valley Branch of the P. R. R. between Hagerstown and Harrisburg, so that a route via W. M. Railway or W. M. Railway and its western connections, Hagerstown, Md., P. R. R., would establish Greencastle, Pa., on the direct line.

Frederick, Md. Frederick, Md., in addition to being a grain transit point, is an interchange point with the B. & O. [fol. 562] Railroad and hence any route comprising the B. & O. or the B. & O. and its western connections into Frederick, Md., thence P. R. R. from Frederick would make Frederick directly intermediate.

Littlestown, Pa. Littlestown, Pa., is located on the Frederick Branch of the P. R. R. between York, Pa., and Frederick, Md., and Littletown would be directly intermediate via (1) B. & O. or B. & O. and its western connections, Frederick, Md., P. R. R., or (2) via W. M. or W. M. and its western connections, Keymar, Md., P. R. R.

Norfolk, Va. Norfolk, Va., would be intermediate via routes comprising the C. & O., N. & W., and Virginian, or these roads and their western connections into Norfolk, Va., thence via P. R. R. from Norfolk, Va.

Reading, Pa. Reading, Pa., would be intermediate via routes consisting of the C. F. A. lines or those lines and their western connections into Buffalo, N. Y., thence L. V. Railroad, Wilkes-Barre, Pa., and P. R. R. Or Reading, Pa., would be intermediate on a route comprising the C. F. A. lines into Buffalo, N. Y., thence Erie Railroad to Binghamton, N. Y., thence D. & H. to Wilkes-Barre, Pa., thence P. R. R.

Schuyler, Pa. Schuyler, Pa., would be on the direct line of a route comprising the Erie Railroad or N. Y. C. Railroad or either of these lines and its western connections to New-

berry Junction, Pa., thence Reading Company to Paper [fol. 563] Mill, Pa., thence P. R. R.

South Danville, Pa. South Danville, Pa., is located on the P. R. R. branch between Sunbury and Wilkes-Barre, Pa., and the same routes that would make Reading, Pa., intermediate would place South Danville on the direct line.

Q. Have you prepared an exhibit showing this situation in graphic form?

A. Yes. Exhibit No. 48 gives two examples of theoretical routes to establish a transit point on the direct line which would result in short hauling the P. R. R. These two diagrams or charts are self-explanatory, and the mileage data are included upon them.

Q. How about the back-haul charges on the two examples, are they subject to back-haul charges?

A. Yes, sir. If we will revert to Exhibit 47, the first example, transit at Reading, the destination Salisbury is covered on sheet 10 of Exhibit No. 47, and it will be seen that the out-of-route charge in the instance you mentioned is  $3\frac{1}{4}$  cents per 100 pounds, shown under column O, the last column at the right.

Q. Now, without mentioning how you arrive at it, from that same exhibit, what is the out-of-route charge on the illustration Toledo to Lambertville?

A. Toledo to Lambertville, transit at Green Castle, that is on sheet 7 of the preceding exhibit, and the out-of-route [fol. 564] rate is  $4\frac{1}{2}$  cents per 100 pounds.

Q. Now, I take it, in referring to these typical routes that could be established through these nine transit points, that you are citing them as a danger signal and not advocating their establishment.

A. I am positively not advocating their establishment. They fall in the same general category as the sought routes to establish Hagerstown on the direct line; they are objectionable, uneconomical, and in many instances entail much circuitry. Further, as in the case of what is sought by the complainant for Hagerstown, such routes would involve not only increased mileage, but additional and unnecessary interchanges between road-haul carriers. The sought routes via Hagerstown covered by the instant complaint and those which would place the nine other competitive transit points on the direct line all have one other point in common, and that is that they would make the estab-

lishment of such routes an incident of transit, which would be a departure from the well-established principle that transit is an incident of the route.

Exam. Berry: You have got a through route now, haven't you, Pennsylvania via Hagerstown?

Mr. Eshelman: Do you mean such as the complainant asks?

Exam. Berry: No. You got one via the Pennsylvania today, a through route, the through rate does not apply, you got the through route.

[fol. 565] Mr. Eshelman: Do you mean ~~via~~ Hagerstown?

Exam. Berry: Yes.

Mr. Eshelman: Subject to back-haul.

Exam. Berry: Yes. The complainants ask that they be given another route, a route over which it would be directly intermediate, and that they be given a joint rate. Now, it is not my understanding that you are contending that the routes they are asking for is circuitous.

Mr. Eshelman: We haven't got to that yet. I would rather that would wait for the mileage, rather than have him express the opinion.

Exam. Berry: I thought he was just talking about it being unduly circuitous.

Mr. Eshelman: He said some of the others might be.

Exam. Berry: I thought you mentioned this in connection with the nine others.

The Witness: That will be covered a little later.

Exam. Berry: How?

The Witness: That will be covered a little later in the testimony.

By Mr. Eshelman:

Q. What were you saying about the establishment of through routes?

A. The establishment of through routes and joint rates merely for the purpose of according transit, or, more correctly, of eliminating a back-haul charge in connection with [fol. 566] available transit, would entail a reversal of a long-observed and eminently sound traffic principle.

Q. Has the tendency in recent years been toward the elimination of uneconomical or circuitous routes, rather than toward the establishment of additional routes.

A. Yes. In response to suggestions of the Federal Coordinator, the railroads some years ago made studies of circuitous or uneconomic routes and eliminated many of them. Others of the same sort failed of elimination for lack of consent of all participants. For example, effective July 1, 1933, there were canceled from the P. R. R. west-bound routing guide from Trunk Line to C. F. A. territory 1,574 such routes—

Exam. Berry: Now, do you need to go into that? If you can show this route is uneconomical and unduly circuitous, the Commission won't prescribe it.

Mr. Eshelman: I might say that we thought it was not without probative value. You may not agree with us, but we thought it was a fact, even if it be a simple fact, we were entitled to rely upon that. The tendency in recent years, from the standpoint of economic railroad operation, is rather to hold down routes which go around rather than to put new ones in, and this was merely the fact that we had adduced in support of that thought.

Exam. Berry: It is not my understanding that there has been any evidence put in to show that this route is unduly [fol. 567] circuitous or uneconomic.

Mr. Eshelman: Well, this is background. If we get some, it might be some, it might not be, you might say that they conclude that some routes are pretty short routes, others are longer, but for whatever value it is we should like to have the facts in.

Exam. Berry: Go ahead.

Mr. Hillyer: Mr. Examiner, might I note here that we are really asking for a route whose distance is comparable with anything that they can offer serving these same points, and the route we are offering also obviates or eliminates an unnecessary expensive back-haul.

Exam. Berry: Go ahead.

Mr. Hillyer: Now, that is what we are asking for. We are not asking for any great spread of routes, such as you are talking about. We are trying to narrow this down to something that is economical.

By Mr. Eshelman:

Q. Continue, Mr. Thornton.

A. And effective on the same date there were canceled from the P. R. R. eastbound routing guide from C. F. A. to

Trunk Line territory 3,868 such routes. In addition, the Official territory lines have since adopted and made effective gateway routing guides applying to Western Trunk Line territory, and the routes contained in this gateway routing guide for application to Western Trunk Line territory are not so liberal or numerous as the routes contained [fol. 568] in the routing guides applying within Official territory.

The rail carriers have been interchanging traffic through regularly established interchange points for many, many years, and in the course of these years a system or fabric of routes has developed to fit the needs of the commerce of the territory served. The establishment of additional routes merely for the purpose of eliminating back-haul charges at transit points would disturb the normal flow of traffic.

Q. Have you prepared an exhibit illustrative of the effect of the "sought" routes on the P. R. R. haul?

And here again I shall have to ask the indulgence of the Examiner and the complainant as to what might be called "sought" routes. We are not trying to tell him what he asks, but this is our understanding of what he did at the time.

A. Yes. No. 49. It covers what are probably the four most important grain shipping points in C. F. A. territory, all of which are reached by the P. R. R. as well as other C. F. A. lines and four local P. R. R. destinations in Eastern Trunk Line territory.

Q. What does the exhibit show, generally speaking?

A. The P. R. R. direct distance, the distance of the P. R. R. haul from its shortest direct junction point with the other roads serving the origin, which latter figure is the shortest haul the P. R. R. would receive under existing [fol. 569] rates and routes and also the P. R. R. distances beyond York and Fulton Junction as sought in the complaint. The exhibit also shows the percentage which the P. R. R. haul from York and Fulton Junction, as sought, reflects of the P. R. R. direct haul and of the P. R. R. shortest haul under existing routes.

Q. Does the exhibit indicate that the P. R. R. would be short hauled?

A. Yes, very materially. It shows that via Fulton Junction we would receive hauls ranging from 8.63 percent to

17.18 percent of our direct haul and but 19.39 percent to 35.23 percent of our present shortest haul. Via York it shows that we would receive hauls ranging from 7.59 percent to 19.29 percent of our present direct haul and from but 16.84 percent to 35.01 percent of our present shortest haul.

Q. Is this showing made by this exhibit representative?

A. Yes. While but four origins and four destinations have been shown the geographical location and importance of these points is such as to make the exhibit illustrative.

Q. Are there any points at which transit arrangements on grain are published which are located closer than Hagerstown to that territory on the P.R.R. known as the Del-Mar-Va Peninsula?

A. Yes. Cambridge, Md., and Norfolk, Va., are closer to the Peninsula than is Hagerstown. Cambridge is located right in the heart of the peninsula and Norfolk—or, more properly, Portsmouth, is just across the Chesapeake [fol. 570] Bay from Cape Charles, Va.

Q. What is the situation with respect to transit at Cambridge, Md., and Norfolk, Va., to representative destinations on the peninsula?

A. Fifteen representative peninsula destinations have been shown on Exhibit No. 50—

Exam. Berry: Before you leave Exhibit 49, your direct route from Chicago to Salisbury is shown as 902 miles.

The Witness: Yes, sir.

Exam. Berry: Now, there is another route, the Pere Marquette, Buffalo, and the Pennsylvania beyond, 497 miles, you get—is transit permitted on the Pere Marquette any place?

The Witness: I imagine, Mr. Examiner, transit is permitted on the Pere Marquette between Chicago and Buffalo; that is, the whole range of territory, Illinois, Michigan.

Exam. Berry: That would seem to contradict the implied contention or thought that may have been advanced here, where you have a direct route you do not join with another carrier where your short haul—where there is transit on the other carrier.

The Witness: No, Mr. Examiner. I do not see that it does. It confirms it. You will recall this morning it was brought out, the complainant is now getting bran and



middlings which were transited at Indianapolis and other [fol. 571] points in Central Freight Association.

Exam. Berry: Other carriers than Pennsylvania, where you had a direct route from origin?

The Witness: We receive the traffic——

Exam. Berry: Isn't he asking for the same thing here in connection with the Western Maryland which you are doing in connection with the Pere Marquette, only you are getting a shorter haul?

The Witness: Well, I can't see it that way, Mr. Examiner.

Mr. Eshelman: Well, we are not here to argue, but what is the situation generally, or will you describe it later in your testimony concerning the routes of the Pennsylvania from C.F.A. origins on other lines, and does your testimony—have you stated or will you state what that general situation is as to interchange points with other lines.

The Witness: Yes, sir.

By Mr. Eshelman:

Q. Whether that is in C. F. A. or Trunk Line territory, and how this worked.

A. Very completely.

Mr. Eshelman: I think you anticipated a point that we are going to cover.

A. Fifteen representative peninsula destinations have been shown on Exhibit No. 50, and they cover the peninsula from end to end; that is, from north to south and from east to west. To these fifteen destinations grain can be [fol. 572] mixed into feed under transit at Hagerstown at a lesser out-of-route charge than at either Cambridge or Portsmouth on the average, and in no case is there a lower out-of-route charge applicable for transit at either Cambridge or Norfolk or Portsmouth than applies in connection with transit at Hagerstown.

Q. Have you made any study showing the comparative opportunity, from the standpoint of transit operation, under existing tariffs of the complainant to serve eastern markets in competition with operators more closely located to such markets?

A. Yes. Exhibit No. 51 shows ten such representative destinations, all east of Hagerstown, Md., and at all of

these ten points transit operators of grain products are located. From the figures shown in columns under caption "Feed Mixing in Transit at Hagerstown, Md., it will be observed that Hagerstown can reach all ten destinations at an out-of-route charge of 4.5 cents per 100 pounds when the movement is over the P.R.R.

Q. Suppose the movement were over lines other than the P.R.R.

A. The exhibit shows seven of the destinations can be reached via presently effective routes providing for transit at Hagerstown without out-of-route or back-haul charge. See specifically explanation of Notes 1, 2, and 3.

Q. Does Hagerstown have any advantage other than shown on the exhibit?

[fol. 573] A. Yes. Provided the grain is drawn from a very large available territory in C.F.A. on the P.R.R. or from Western Trunk Line points moving via Effner or Chicago thence P.R.R., the transit operator at Hagerstown can reach Portsmouth, Va., by N. & W. absorption of the switching charge at the going line-haul rate plus the transit charge without back-haul or out-of-route charge.

Q. How is this possible?

A. Because routes are available from P.R.R. origin territory in C.F.A. to destinations on the N. & W. between Norfolk and Roanoke, Va., via P.R.R., Hagerstown, Md., and N. & W. Railway.

Q. So that in the ten instances shown as destinations on the exhibit the complainant can presently reach eight of them via available tariff routes from C. F. A. or Western Trunk Line territory with transit at Hagerstown without out-of-route or back-haul charge?

A. Yes.

Q. And is this situation quite representative of that generally prevailing?

A. It is quite representative. There are routes now open for transit at Hagerstown to a large part of eastern territory via which transit at Hagerstown is not subject to back-haul or out-of-route charge.

Q. What is the situation with respect to the competitive [fol. 574] points; that is, the points at which transit is also performed in the event such operators desire to sell in the Hagerstown market?

A. The figures in the righthand columns of this exhibit depict this situation. On grain originating in C. F. A.

transited at the ten points shown on the exhibit destined Hagerstown when moving via the P. R. R. the average out-of-route haul is 206.7 miles, or 138.08 percent of the Hagerstown average circuitry of 149.7 miles, as shown on the exhibit, and the average additional charge, out-of-route or local rates, as shown, is 12.4 cents per 100 pounds or 275.56 percent of the Hagerstown out-of-route charge of 4.5 cents per 100 pounds. It should be remembered that to eight of the ten points in question Hagerstown now has available routes via which the flat line haul rate applies without back haul charge.

Q. Please proceed with your comparison Hagerstown versus the other ten transit points?

A. If we omit Portsmouth, Va., and consider the remaining nine transit points and compare the current back-haul scale on grain products accorded transit for the average extra haul of 160.7 miles, we have an average out-of-route scale charge of 8.3 cents per 100 pounds for this distance. In other words, the extra distance is but 107.35 percent of the excess distance via Hagerstown of 149.7 miles, while the out-of-route scale of 8.3 cents is 184.44 percent of the Hagerstown average out-of-route charge of 4.5 cents per 100 pounds.

Q. Do the competitive points have any other disadvantage not present in the case of Hagerstown, Md.?

A. Yes, six of the ten points shown have an additional disadvantage in reaching Hagerstown, which Hagerstown does not have in reaching these same points under transit.

Q. What is it?

A. The transit tariffs are subject to the three-way rule, and as five of the points shown are subject to Philadelphia grain rates and one of them is subject to New York grain rates ex C. F. A. and Western Trunk Line territories, the five points subject to the Philadelphia basis pay a line-haul rate one cent per 100 pounds higher than the Baltimore rate, to which Hagerstown is subject, and Bordentown, N. J., would pay the New York rate, which is 3 cents higher than Baltimore basis. This increased rate for the line-haul service is over and above the charge for transit and back haul, and correspondingly increases Hagerstown's competitive advantage.

Q. Can any of the ten transit points competitive with Hagerstown reach the Hagerstown market via routes other

than the P. R. without out-of-route or back-haul charge or rate penalty under the three-way rule?

A. No, sir. They cannot.

Q. In the discussion of the map exhibits, covering the C. F. A. origin territory mention was made of an additional [fol. 576] situation involving rates and routes over P. R. R. stations to N. & W. destinations. Have you prepared an exhibit to cover this?

A. Yes, two exhibits. No. 52 is a statement showing the origin territory on the P. R. R. and certain lateral lines and also the destination territory on the N. & W. between which the grain rates apply via P. R. R.-Hagerstown, Md.-N. & W. Railway, thus establishing Hagerstown directly intermediate and permitting transit at Hagerstown without back-haul or out-of-route charge. Exhibit No. 53 is a map depicting this situation.

Q. Just what P. R. R. origin territory is covered?

A. Grain rates apply to N. & W. points via Hagerstown from C. F. A. territory served by the P. R. R. from all points east of Columbus, Ohio, from points Toledo, Ohio, Detroit, Mich., and each thereof, from the former G. R. & I. Railway Fort Wayne, Ind., to Mackinaw City, Mich., from the main line of the Fort Wayne routes west to Chicago, inclusive, and also from certain branches.

Q. And the territory of origin and destination are indicated by the heavy black lines on the upper and lower portions, respectively, of your Exhibit No. 53?

A. Yes, sir.

Q. So that a very large and important origin territory is covered?

A. Yes, sir.

Q. What N. & W. stations are covered from a destination [fol. 577] standpoint by these rates and routes?

A. The N. & W. line from Norfolk to Salem, Va., which latter point is just west of Roanoke, Va.; the branch extending to Durham, N. C., as far south as Brookneal, Va., inclusive; and the Shenandoah Division from St. James, Md., the first station south of Hagerstown, Md., to Roanoke, Va., inclusive. Certain branches are also covered.

Q. So that quite a large territory from both the origin and destination standpoint is involved?

A. Very extensive, yes.

Q. Does this situation result in any other advantage to the complainant in his grain transit operation at Hagerstown, Md.?

A. It gives him additional origin and destination territories of great extent and importance over and above the points shown on the statement and map.

Q. In what manner?

A. There are no through one-factor rates published on grain and grain products from C. F. A. or W. T. L. territory points to Southern territory; all of such rates being made on combination basis over the Virginia cities, generally Lynchburg, Va.

Thus the situation covered by Exhibit No. 52 results in the complainant having the going and currently applicable combination basis over the Virginia cities and of the Chicago reshipping rate applicable on grain originating in Western Trunk Line territory.

[fol. 578] The result is that the complainant at Hagerstown, Md., can secure grain at many points in C. F. A., including Toledo, Ohio, and Chicago, Ill., and also from Western Trunk Line territory via Chicago on as low a basis as any of his C. F. A. or Trunk Line competitors, and serve the Virginia cities, southern Virginia, the Carolinas, and Georgia on as favorable a basis of rates as is available to any of his Trunk Line territory or Virginia competitors. Please understand that no back-haul or out-of-rate charge is involved when the movement is via Hagerstown over the P. R. R.-N. & W. route in the cases I have just cited.

Q. How valuable are the destinations available on the N. & W. from the standpoint of tonnage potentiality?

A. They are quite valuable. Aside from Southern territory, a very extensive destination territory on the N. & W. is open without out-of-route or back-haul charge to transit operation of grain at Hagerstown, Md.

Q. When were the rates covered by Exhibit 52 established?

A. For many, many years the rates applied via P. R. R.-Hagerstown, Md.-N. & W. from P. R. R. territory in C. F. A., Cleveland, Vernon, Crestline, Mt. Vernon, Newark, Marietta, Ohio, and east thereof.

Q. How about Toledo, Fort Wayne, South Bend, Chicago, Grand Rapids?

A. The Hagerstown route from the P. R. R. stations west [fol. 579] of the Cleveland-Crestline-Newark-Marietta line

to the territory in question on the N. & W. Railway was established effective September 1, 1936, in Supplement No. 60 to P. R. R. I. C. C. No. 399.

Q. If you know why this additional P. R. R. territory was so covered via Hagerstown, Md., will you please state the reason?

A. The additional P. R. R. territory just described was provided with the Hagerstown, Md., route to the N. & W. to meet a competitive situation existing via the B. & O. Railroad. The B. & O. origin territory in C. F. A. routing to the N. & W. points in question via Shenandoah Junction, W. Va., was more extensive than the P. R. R. territory in C. F. A. covered via Hagerstown to the N. & W. This extension of P. R. R. C. F. A. origin territory via Hagerstown was made to meet the B. & O. competitive situation through Shenandoah Junction.

Q. Was Hagerstown intermediate on the B. & O.-Shenandoah Junction-N. & W. route?

A. No, sir. A back-haul charge would be involved for grain transit at Hagerstown via the B. & O.-Shenandoah Junction-N. & W. route.

Q. But with the establishment of the P. R. R.-Hagerstown-N. & W. route the complainant's operation became directly intermediate, did it not, so that complainant can receive and he received the benefit of all of this additional [fol. 580] territory both from the origin and destination standpoints at the flat rate without back-haul or out-of-route charge?

A. Yes.

Q. So that the action you have just described resulted to the material benefit of the complainant?

A. Yes, it did.

Q. Have you any further comments on this particular phase of the matter?

A. Exhibit No. 52 and map Exhibit No. 53 now under discussion should be considered as modifying the general map exhibits of C. F. A. territory and Trunk Line destination territories, numbered 6 to 9. This modification is, of course, favorable to the complainant.

Q. What is the situation in the reverse direction; that is, from points on the N. & W. to destinations on the P. R. R.?

A. Effective July 31, 1937, as a part of the adjustment just described, a route via N. & W.-Hagerstown, Md.-P. R. R. was established from all N. & W. stations in C. F. A. terri-



tory—that is, from 6660 Ceredo, W. Va., to 7235 Cincinnati, Ohio, to a very large portion of the P. R. R. in Trunk Line territory.

Q. Would these grain and grain products rates via the route you have just mentioned cover transit at Hagerstown, Md., without an out-of-route or back-haul charge?

A. Yes.

Q. Describe briefly the destination territory on the [fol. 581] P. R. R. thus accessible without back-haul or out-of-route charge from C. F. A. origins on the N. & W. via N. & W.-Hagerstown-P. R. R.

A. The P. R. R. territory embraced from a destination standpoint is generally the New Jersey, Schuylkill, Philadelphia, and Sunbury divisions; the former Philadelphia, Baltimore & Washington Railroad, the former Northern Central Railroad, the former Cumberland Valley Railroad Maugansville, Md., and north, the Lebanon Branch and the Berwick Branch and the former Delaware Division, which former division embraces territory on the Del-Mar-Va Peninsula from Wilmington, Del., on the north, to Chincoteague, Va., Delmar, Del., and Cambridge, Md., on the south. This is by far the most important part of the peninsula from the standpoint of consumption of animal and poultry feed.

Q. And your map exhibits, Nos. 6 to 9, should be considered in the light of this additional available territory not subject to extra charge for back or out-of-route haul?

A. Yes. This additional territory should be taken into account in the consideration of available territory.

Q. Can you cite another instance of substantial coverage of grain and grain products rates involving a large origin and destination territory via which transit on grain is available at Hagerstown, Md., without out-of-route or back-haul charge?

A. Yes. From a very extensive origin territory on the C. & O. Railway to practically the entire D. L. & W. Railroad.

[fol. 582] Q. Please be specific, what origin stations on the C. & O. are covered?

A. Fort Monroe, Va., to Louisville, Ky.

Q. And to what destination territory on the D. L. & W. Railroad is a route through Hagerstown, Md., effective from the C. & O. origins you have just named?

A. The entire main line of the D. L. & W. Railroad from Bergen Junction, N. J., to East Lancaster, N. Y.

Q. Any other D. L. & W. territory similarly covered?

A. Yes, the territory Chenango Bridge, N. Y., to Utica, N. Y., both inclusive.

Q. In what tariff are the routes provided?

A. In C. & O. I. C. C. No. 11263.

Q. Name a few of the routes effective from and to the territory you have described establishing Hagerstown directly intermediate.

A. C. & O., Waynesboro Union Station, N. & W., Hagerstown Junction, W. M., Shippensburg, Reading Company, Allentown, Central Railroad of New Jersey, Phillipsburg, N. J., D. L. & W. Railroad—C. & O., Durbin, W. M., Shippensburg, Reading Company, Allentown, Central Railroad of New Jersey, Phillipsburg, D. L. & W. Railroad—C. & O., Durbin, W. M., Shippensburg, Reading Company, Rupert, Pa., D. L. & W. Railroad—C. & O., Durbin, W. M., Shippensburg, Reading Company, East Penn Junction, L. V. Railroad, Phillipsburg, D. L. & W. Railroad.

[fol. 583] Q. Is there any inherent advantage from the standpoint of grain transit operations in a location in the eastern portion of Trunk Line territory, rather than farther west in C. F. A. territory or the Western part of Trunk Line territory?

A. Yes, being closer to the market; that is, to the ultimate consignee, the eastern miller is in position to give quicker delivery than his more westerly-located competitor. This is a very important factor.

Q. Anything else accruing to the advantage of an eastern location contrasted to a location farther removed from the Atlantic Seaboard territory?

A. Yes, there is a much wider source of supply of grain and the other commodities entering into the manufacture of mixed feed.

Q. Have you prepared an exhibit covering representative points and movements illustrating your last statement?

A. Yes, No. 54.

Q. Please describe this exhibit briefly.

A. Four representative grain originating points in Ohio have been "followed through" from a rate, transit, and out-of-route or back-haul charge standpoint to four typical eastern destinations, showing the total charges if the grain

were transited at Hagerstown, Md., versus four C. F. A. milling and mixing-in-transit points.

Q. What rates have you shown?

[fol. 584] A. Those on grain products, which would apply to the outbound or transited commodity to the four representative destinations on the exhibit from both the origin point of the grain and the transit point to destination, dependent upon whether settlement is made on the transit point or origin point rate, and also the transit and back-haul or out-of-route charges.

Q. What else?

A. The detail is shown quite fully, and on the first page of the exhibit from the "Total" column for transit at Hagerstown and the C. F. A. transit point it will be observed that in every case the total charge when the transit is performed in C. F. A. is substantially higher than when performed at Hagerstown.

Q. Have you any other comment with particular reference to page 1 of this exhibit?

A. Yes, the charge when transited at Hagerstown is based on the P. R. R. tariff under which a back-haul charge of 4.5 cents per 100 pounds applies. To three of the four destinations there are available routes at present effective under which the Hagerstown complainant can handle grain from the origins shown without such back-haul or out-of-route charge. Thus to three of the four destinations Hagerstown's advantage over the C. F. A. millers is actually 4.5 cents per 100 pounds greater than the exhibit shows.

Q. Now, explain page 2 of this exhibit, bearing in mind that you have just explained the possibility of reducing the [fol. 585] Hagerstown total charge 4.5 cents per 100 pounds to three of the four destinations shown?

A. Page 2 is a summary of page 1, and shows the average distance of the 16 movements to be via Hagerstown 729 miles and via the C. F. A. transit points 749.75 miles, or but 20.75 miles greater on the average when the transit is in C. F. A. than when it is at Hagerstown. Expressed in percentages, the average haul via Hagerstown is 97.36 percent of the average haul when the transit is performed at a C. F. A. point.

Q. What does page 2 of this exhibit show as to increase over and above the line-haul rate from point of origin of the grain to destination of the feed?

A. Taking the rate from origin of the grain to destination of the feed plus the transit charge, which is uniformly one-half cent per 100 pounds, we have Hagerstown paying 4.5 cents over the origin of the grain to the destination of the feed rate plus one-half cent transit charge, and the average excess of the C. F. A. millers over the rate from the origin point of the grain to the destination of the feed plus the one-half cent transit charge is 7.375 cents, or  $7\frac{3}{8}$  cents per 100 pounds.

Q. Expressed in percentages, what is the Hagerstown excess charge just described of the C. F. A. average similar excess charge?

A. Hagerstown's charge of 4.5 cents per 100 pounds is [fol. 586] 61.02 percent of the average of the C. F. A. charge of 7.375 cents per 100 pounds.

Q. Have you made any study to develop whether or not the complainant at Hagerstown is actually using grain or grain products in his transit operation at Hagerstown which would not be available to the C. F. A. transit operations, at least on as low a rate basis?

A. Yes.

Q. Will you please describe the study.

A. The settlements on the outbound feed shipments from the complainant's plant at Hagerstown, Md., to destinations on and via the P. R. R. for the six months' period December, 1940, to May, 1941, both inclusive, were analyzed to determine what inbound billing was applied against the outbound mixed feed shipments.

Q. And what did this analysis show?

A. It showed that of 383 outbound cars inbound billing was used in settlement which in 98 cases, of 25.59 percent of the total outbound Hagerstown movement of 383 cars for this six months' period, would not be available to the millers in C. F. A. territory, including those located at the four points shown on this exhibit.

Q. Why could it not be used by C. F. A. millers?

A. In 98 cases the inbound billing covered movement all-rail and rail-lake-rail from Canada via Buffalo or the [fol. 587] Niagara Frontier, from Buffalo arriving at Buffalo via lake, from Buffalo local, or from Erie, Pa., local.

Q. And may I ask why the six months, December, 1940, to May, 1941, both inclusive, were used?

A. Because we were attempting to get ready for a hearing on this case in July, 1941, and at that time the six months'

period, December, 1940, to May, 1941, was the latest six months' period available from our transit settlement records, and for the latest six months' period available our analysis definitely developed that Hagerstown holds a very distinct advantage over its C. F. A. competitors as to sources of inbound grain. This is proven beyond question by the study we undertook and the results which I just gave.

Q. What is the situation with respect to millers located on Trunk Line railroads generally reaching eastern destinations on the P. R. R. under transit performed in Trunk Line territory on other than on the P. R. R.?

A. Generally speaking, it is impossible for them to reach markets on the eastern portion of the P. R. R. at the through rate origin to destination plus the transit charge.

Q. Have you prepared an exhibit illustrating this situation?

A. Yes, Exhibit No. 55, consisting of eight pages.

Q. Will you please explain this exhibit.

A. The exhibit shows the rates which would apply on grain from Chicago, Ill., via various routes to transit points [fol. 588] located in the States of New York, New Jersey, and Pennsylvania on lines other than the P. R. R. and thence outbound in the transited form to points on the P. R. R. Salisbury, Md., Dover, Del., Jamesburg, N. J., and Popes Creek, Md., are typical destinations, and they have been employed in all the cases shown on the exhibit.

Q. Continue.

A. It also shows the basis of rates which would apply, were transit in effect from origin to the P. R. R. destination via the various routes shown on the exhibit.

Q. How many transit points on roads other than the P. R. R. have been used?

A. Twenty-seven instances are shown, although they all do not cover different transit points. To illustrate transit at Waverly, N. Y., has been worked out when performed on the D. L. & W., L. V. Railroad and Erie Railroad.

Four destinations have been used from each of the 27 representative transit points, making a total of 108 illustrations on the exhibit.

These 108 illustrations present a comprehensive picture of the situation when the transit is performed on the Central Railroad of New Jersey, D. L. & W. Railroad, Erie Railroad, L. V. Railroad, Reading Company, and the New York Central Railroad.

**Exam. Berry:** Does any other railroad except the Penn-  
[fol. 589] sylvania service Salisbury, Dover, Jamesburg,  
Popes Creek?

**The Witness:** No, sir. They are local points.

**Q.** With reference to these 108 illustrations covering Chicago grain transited at points on connecting lines in Trunk Line territory and destined Pennsylvania Railroad points shown in Maryland, Delaware, and New Jersey, how would the charges be settled under the existing arrangements?

**A.** As the captain of the exhibit shows and as worked out in detail in each of the 108 illustrations, settlement would be on the combination basis.

**Q.** And would that be materially higher in every case than Hagerstown would pay on Chicago grain to these destinations via Pennsylvania Railroad direct?

**A.** Yes, sir. Hagerstown would pay the Chicago reshipping rate to destination plus transit charge plus out-of-route or back-haul charge of 4.5 cents. To Salisbury, Md., this would be  $31\frac{3}{4}$  cents per 100 pounds versus charges shown on the exhibit for transit at the points shown to Salisbury, Md., ranging from 42 cents to 48 cents per 100 pounds, or from  $10\frac{1}{4}$  to  $16\frac{1}{4}$  cents per 100 pounds higher than Hagerstown, Md.

**Q.** Then Hagerstown is much better off in reaching Pennsylvania Railroad eastern points under transit than millers on the Central Railroad of New Jersey, Reading Company, and New York State roads generally on C. F. A. and Western grain?

**A.** That is correctly stating the present situation.

[fol. 590] **Q.** Would it be possible for the transit points shown on this exhibit to reach the P. R. R. destinations shown on the flat origin-to-destination rate plus the transit charge of one-half cent per 100 pounds if rates were in effect from Chicago to the P. R. R. destination via the routes shown up to the transit points and thence via the junction with the P. R. R. indicated from the transit point?

**A.** Yes, sir.

**Q.** But in no case is such a route effective at present?

**A.** That is correct. There are no such routes in effect. The combination basis applied in every instance.

**Q.** And naturally you are not advocating the establishment of such routes?

**A.** Very definitely, I am not.



Q. What is the comparison versus the P. R. R. direct distance Chicago to the four destinations shown?

A. The circuitry over the P. R. R. direct distance ranges from 6.58 percent in the case of transit at Waverly, N. Y., D. L. & W., destination Jamesburg, N. J., to 51.26 percent when the transit would be at Bloomsbury, N. J., Lehigh Valley Railroad on feed destined Popes Creek, Md.

Q. Have you broken the circuitry involved in each of the 108 examples down into percentage blocks using as the comparison the P. R. R. direct distance Chicago to destinations? If so, please state it.

[fol. 591] A. Under 10 percent circuitry, two cases.

Over 10 percent and under 15 percent circuitry, six cases.

Over 15 percent and under 20 percent circuitry, 13 cases.

Over 20 percent and under 25 percent circuitry, 41 cases.

Over 25 percent and under 30 percent circuit, 12 cases.

Over 30 percent and under 35 percent circuitry, 13 cases.

Over 35 percent and under 40 percent circuitry, 12 cases.

Over 40 percent and under 45 percent circuitry, 8 cases.

Over 50 percent circuitry, one case.

Q. Have you made any cumulative comparisons?

A. Yes. Sixty-two illustrative examples or 57.41 percent of the total of 108 shown on the exhibit are 25 percent or less circuitous; 74 of the typical examples, or 68.52 percent of the total of 108 are 30 percent or less circuitous and 87 of the examples shown on the exhibit, or 80.56 percent of the total of 108, are 35 percent or less circuitous as compared to the Pennsylvania Railroad direct distance Chicago to the four destinations.

Q. What is the situation as to P. R. R. millers in the eastern portion of Trunk Line territory reaching points on the New York State lines when C. F. A. or Western grain is used?

A. The situation is the reverse of that covered by Exhibit No. 55 now under discussion.

Q. Can Hagerstown reach the Central Railroad of New Jersey or the Reading Company on the through rate plus [fol. 592] the transit charge from C. F. A.?

A. Yes. There are routes at present in effect under which this is possible.

Q. Have you prepared an exhibit or exhibits illustrating the situation of transit of Chicago grain at P. R. R. transit points destined to points on roads to which Hagerstown now

enjoys the through rate without out-of-route or back-haul charge?

A. Yes, two exhibits. The first, No. 56, deals with other grain transit points on the P. R. R. in close proximity to Hagerstown which are subject to out-of-route or back-haul charges ranging from 3 cents to 6 cents, and averaging 4.5 cents per 100 pounds on Chicago grain destined the Del-Mar-Va Peninsula. The exhibit is self-explanatory, and shows that to the Central Railroad of New Jersey, D. & H. L. I. Railroad, Reading Company, and S. I. R. T. Railway, these three transit points are subject in every instance to an out-of-route charge or the combination basis of rates. Please bear in mind that Hagerstown via present routes can reach all of these destinations on the flat basis without out-of-route or back-haul charge.

Q. Do I understand you to say Hagerstown can get into Long Island at a flat basis even though P. R. R. millers cannot, these located on branches?

A. Yes, sir.

Q. Please describe the second of these exhibits, which will [fol 593] be Exhibit No. 57.

A. Exhibit No. 57 shows the situation if the transit of grain moving via the route of the P. R. R. from Chicago is at Wilmington, Del., under the P. R. R. transit tariff with the destination on roads which Hagerstown can now reach of the flat rate. It will be observed that to points on the Central Railroad of New Jersey and D. & H. Wilmington is subject to the combination basis and to points on the Reading Company Wilmington is subject to either a back-haul or out-of-route charge of 9 cents per 100 pounds, or to the combination rate.

Q. Have you any further comment with respect to Wilmington, Del.?

A. This operation was established at Wilmington for the purpose of serving destinations on the Del-Mar-Va Division of the P. R. R. It will be seen that such a location, while favorable in so far as peninsula destinations are concerned, is offset, in a great part at least, by disadvantages to other destination territories.

Q. Are these exhibits covering transit at Bedford, Green-castle, Littletown, and Wilmington typical of the situation in which a P. R. R. transit operator in Eastern territory

finds himself in attempting to reach destinations on roads to which Hagerstown now has the flat basis?

A. Yes. They illustrate the situation quite generally prevailing.

[fol. 594] Q. What is the present routing from stations on the P. R. R. in C. F. A. territory to destinations on the W. M. Railway Hagerstown, Md., and east thereof? Use Chicago, Ill., as typical of the P. R. R. C. F. A. situation.

A. From Chicago, Ill., P. R. R., and from C. F. A. points on the P. R. R. generally, the junctions between the P. R. R. and Western Maryland Railway to destinations on the latter line Hagerstown, Md., and east are either Fulton Junction, Md., Hagerstown, Md., Cumberland, Md., Hanover, Pa., or Keymar, Md., depending on the particular destination. In some instances two or more optional routes are provided to the same destination, but the five junctions I have just named embrace the points of interchange.

Q. To what destination territory on the W. M., Hagerstown and east, is the route from Chicago, Illinois, Pennsylvania Railroad via P. R. R.-Hagerstown, Md.-W. M. Railway?

A. To stations between Baltimore, Md., and Charlton, Md., both inclusive. This includes the W. M. main line from its eastern terminus in Baltimore to a point slightly west of Hagerstown, Md., and it also includes the W. M. branch to Shippensburg, Pa., but it does not include the W. M. branches in the York, Pa., district.

Q. Would Hagerstown be directly intermediate to these W. M. stations, and would transit be possible without out-of-route or back-haul charge at Hagerstown on C. F. A. [fol. 595] grain originating at P. R. R. points in C. F. A., including Chicago, Ill.?

A. It would be intermediate, but the W. M. transit tariff is restricted so that transit would not apply. The W. M. transit tariff applies only when the traffic is received by the W. M. Railway at Cherry Run or junctions west of Cherry Run.

Q. What is the routing from the eastern portion of the W. M. Railway, say, Hagerstown and east, to P. R. R. points in C. F. A. territory?

A. From the entire W. M. Railway to P. R. R. destinations in C. F. A. territory, using Chicago, Ill., and Rochester, Pa., as typical, the routing is via W. M. Railway-Connellsville, Pa.-P. R. R. W. M. Railway; I. C. C. No. 8598 covers.

Q. So that on traffic between the W. M. and P. R. R. which the W. M. Railway originates the originating line, that is, the W. M. Railway, takes its longest possible haul?

A. Yes, sir.

Q. Do you wish to make any other comment in this connection?

A. Yes. You will observe that on traffic from the W. M. Railway to the C. F. A. portion of the P. R. R. the interchange between the W. M. and P. R. R. is directly between the interested carriers. No "bridge" or third line is interposed between the W. M. and P. R. R., but the interchange is directly between the two involved carriers.

Q. Can you name any other territories between which Hagerstown, Md., is directly intermediate and, hence, open [fol. 596] to grain transit without out-of-route or back-haul charge?

A. Yes. The portion of the P. R. R. in Trunk Line territory—that is, Buffalo, Erie, Oil City, Pittsburgh, and east—on the one hand, and the portion of the N. & W. Railway, generally that portion Kenova, W. Va., and east thereof, on the other, quite generally routes via Hagerstown, Md., in both directions, also points on the Central Railroad of New Jersey, Reading Company, on the one hand, and N. & W., on the other, using Shippensburg, Western Maryland N. & W. route.

Q. Any other territories?

A. Yes. The same situation as I have just described between the P. R. R. and N. & W. quite generally obtains between the N. & W., on the one hand, and the so-called New York State Lines, on the other; that is, routing is directly through Hagerstown, Md.

Exam. Berry: The N. & W. is not a defendant in this case?

Mr. Eshelman: Yes, that is correct.

Exam. Berry: That is my understanding. Is it correct?

Mr. Eshelman: You are correct.

The Witness: That is right.

By Mr. Eshelman:

Q. Will you give a few typical examples.

A. Let us first consider the D. L. & W. Railroad. From and to the N. & W. Railway in Trunk Line territory there are routes through Hagerstown via (1) N. & W.-Hagers-

town, Md.-P. R. R.-Elmira, N. Y., Kearney Junction, N. J., [fol. 597] Manunka Chunk, N. J., Martins Creek, N. J., Northumberland, Pa., Phillipsburg, N. J., etc., as the case may be, thence D. L. & W., or via N. & W.-Hagerstown-W. M.-Shippensburg, Pa.-Reading Company direct to the D. L. & W. at Rupert, Pa., or beyond the Reading Company to the D. L. & W., using the C. R.R. of N. J., or L. V. Railroad as the connecting line between the Reading and Lackawanna. These routes apply in both directions.

Q. What is your next illustration?

A. The Erie Railroad in Trunk Line territory. Routes are published via N. & W.-Hagerstown-P. R. R.-Brookway, Pa., Johnsonburg, Pa., Marion, N. J., Elmira, N. Y., etcetera, and Erie Railroad, and also via N. & W.-Hagerstown, Md.-W. M.-Shippensburg, Pa.-Reading Company, thence Central Railroad of New Jersey, L. & H. Railway to the Erie Railroad. These routes apply both the north and southbound.

Q. Any illustrations to Lehigh Valley?

A. The Lehigh Valley Railroad. Routes are in effect via (1) N. & W.-Hagerstown-P. R. R., Mt. Carmel, Pa., Wilkes-Barre, Pa., Schuylkill Haven, Pa., Stanley, N. Y., Phillipsburg, N. J., etcetera, thence Lehigh Valley Railroad and (2) via N. & W.-Hagerstown-W. M. Railway-Shippensburg, Pa., Reading Company, East Penn Junction, Pa., and thence Lehigh Valley Railroad. These routes apply both north and southbound.

Q. What is the situation showing the New York Central Railroad in Trunk Line territory?

[fol. 598] A. Routes are in effect between the Trunk Line territory portions of the N. & W. and N. Y. C. Railroad via (1) N. & W.-Hagerstown-W. M.-Shippensburg, Pa.-Reading Company-Newberry Junction, Pa., N. Y. C. Railroad; and (2) via N. & W.-Hagerstown-P. R. R.-Canadaigua, N. Y., and Newark, N. Y., Sixtieth Street, New York City, Newberry Junction, Pa., etcetera, thence N. Y. C. Railroad. These routes apply in both directions.

Q. Is this an extensive coverage?

A. The territory open to transit at Hagerstown without out-of-route or back-haul charge is very large and extensive, as I have pointed out here and elsewhere in my testimony.

Q. Between the N. & W., on the one hand, and the D. L. & W., and L. V., and the Trunk Line territory portions of

the N. Y. C. Railroad and Erie Railroad, on the other hand, the routes you have described involve intermediate carriers. Why is not the interchange direct the same as between the P. R. R. and Western Maryland?

A. First, as to the D. L. & W. and L. V. Railroad. Neither of these lines has a physical connection with the N. & W. Railway, and hence the use of an intermediate carrier is essential. We have been discussing the Trunk Line territory portions of the N. Y. C. and Erie Railroad. The only direct connections between these roads and the N. & W. is in C. F. A. territory. The N. & W. and the Erie both reach Cincinnati, Ohio, while the N. & W. and N. Y. C. Railroad [fol. 599] both reach Cincinnati and Columbus, Ohio. There are no physical connections between the N. Y. C. and Erie, on the one hand, and the N. & W., on the other, in Trunk Line territory. Thus to avoid an extremely long haul to and from the C. F. A. junctions of Columbus or Cincinnati, Ohio, the use of an intermediate carrier is necessary.

Q. What is the situation of Hagerstown with respect to traffic between the north and the south?

A. Hagerstown's location places it in a natural intermediate location on practically all movements between the North and the South.

Exam. Berry: Mr. Eshelman, what interest have we got in the traffic between North and South in this case?

Mr. Eshelman: It may be on some of this my order is not as perfect as it should be, but I think that it will show when complete, I think, our situation, that we are interested in showing here, and that we want to have the Commission understand when they approach this is, I want them to understand the Hagerstown situation along with the other. I think that the Commission in making up its mind here as to whether to do this thing, whether to exercise its power, when it determines what is in the public interest, I wanted to know whether it thinks that Hagerstown is picked on, whether it is the orphan, or whether it is in precisely the same situation or in a better situation than eastern lines, [fol. 600] generally. You might say to me that that would have little or no bearing upon the issues, but it seems to me this, if we are correct in our impression, that what the plaintiff asks here, if the Commission grants that, would be an opening wedge; I mean to say the establishment of a



principle which may be applied widely, I would like to have the Commission do it with its eyes open. We can't—

Exam. Berry: Well—

Mr. Eshelman: Excuse me, sir.

Exam. Berry: I venture to say that over 50 percent, if probably not 80 percent of that testimony we have had in here today is put in some far-fetched theory of that character.

Mr. Eshelman: I hope that you won't misjudge us or prejudice us until you hear all of our testimony, and until you read our briefs.

Exam. Berry: Now, we have had any quantity of testimony here about the rates from two points on Norfolk & Western. Norfolk & Western is not interested. Now, you are going into the rates, batch after batch of testimony, with rates dealing with the Norfolk & Western situation. Now, you are going into rates from the North to the South. There is no contention here that Hagerstown hasn't got transit on their rates to other points. It is asking for them on points to the Pennsylvania Railroad, that is the point in issue.

Mr. Eshelman: We thought there was implicit in complainant's case—we thought there was an inference at least [fol. 601] that Hagerstown was one point that did not have, relatively speaking, as much as others. In fact, I think that was the complainant's own testimony.

Exam. Berry: I do not recall—

Mr. Eshelman: We have a right to meet that.

Exam. Berry: I do not recall a scintilla of evidence.

Mr. Hillyer: Let the record show that that is not my position.

Mr. Eshelman: I understand that complainant is not saying that their situation in the East is less advantageous than that of other millers in the East.

Mr. Hillyer: You do not understand us correctly.

Exam. Berry: Go ahead, Mr. Eshelman.

Mr. Eshelman: I think we are through with that.

By Mr. Eshelman:

Q. Will you continue, please, Mr. Thornton.

A. Hagerstown's location places it in a natural intermediate location on practically all movements between the North and the South. In fact, it is recognized as a gateway of major importance on traffic between Trunk Line and

New England territories, on the one hand, and the South, on the other. From the geographical location of Hagerstown its advantage is with respect to movements between the North and the South, rather than on traffic between the East and the West.

Q. Have you prepared an exhibit showing Hagerstown's position on traffic between the East and the West?

[fol. 602] A. Yes. Exhibit No. 58, consisting of two pages of short mileages and routes via such short mileages apply, and two maps illustrating the instances covered by the statement.

Q. Please explain this exhibit briefly.

A. Twenty-six representative destinations in Eastern Trunk Line territory have been used extending from Aberdeen, Md., on the south, to Binghamton, N. Y., on the north, and from New York, N. Y., on the east, to Altoona, Pa., on the west. The short-line working or tariff route mileage and also the short line I. C. C. Docket No. 15879 rate making mileages have been shown.

Q. Will you also explain the maps?

A. The short-line tariff route has been traced by a line of small circles on the map comprising page 3 of this exhibit, and the I. C. C. 15879 rate-making miles have been shown on page 4 of the exhibit.

The maps show that none of the short routes, either tariff or I. C. C. 15879, pass through Hagerstown, Md., and that they do not extend south of the P. R. R. lines. This establishes conclusively that to the large destination territory covered by this exhibit Hagerstown is not on either the actual short line or Docket 15879 rate-making route in a single instance.

Q. Have you any further comment on this exhibit?

A. Yes. The explanation of the notes will disclose that to 20 of the 26 representative destinations—or 76.92 per cent—Hagerstown, Md., now has routes permitting transit without out-of-route or back-haul charge.

Q. Why was Chicago used as the C. F. A. origin point?

A. Because Chicago is not only the country's principal grain market, but also because the entire eastbound grain and grain products adjustment is based on the Chicago to New York rate. Chicago is the key point in the grain adjustment to the East.

Q. How about the other "rate-break" points, Peoria and East St. Louis, Ill.?

A. Exhibit No. 59 covers Peoria and East St. Louis, Ill. I have taken the three most southerly main line points shown on the Chicago exhibit, No. 58, namely, Aberdeen, Md., Wilmington, Del., and York, Pa., and shown the short-line tariff or working route and the Docket 15879 rate-making miles between these three points and East St. Louis, Ill., and Peoria, Ill.

It will be observed that in all cases the short tariff or working route does not make Hagerstown on the direct line and only in the case of Aberdeen, Md., is Hagerstown on the Docket 15879 "theoretical" short line route from or to Peoria and East St. Louis, Ill.

Between Wilmington, Del., and York, Pa., on the one hand, and Peoria and East St. Louis, Ill., on the other, the short-line rate-making Docket 15879 route figures over the P. R. R., whose main line is considerably north of Hagerstown.

Q. Is York on any road other than the P. R. R.?  
[fol. 604] A. Yes. On two other roads, the Maryland and Pennsylvania Railroad and the Western Maryland Railway. However, neither of these roads figures in the short-line tariff or Docket 15879 rate making route between York, Pa., and Chicago, Peoria, and East St. Louis. The route between York and all three C. F. A. grain rate-break points is over the P. R. R., in so far as the eastern or Trunk Line territory portion of the haul is concerned.

Q. Is the P. R. R. a party to any presently effective tariff naming class or commodity rates from C. F. A. or Western Trunk Line territory to points on its line using the W. M. as an intermediate or "bridge" carrier?

A. With one minor and very unimportant exception, no.

Q. What is that exception?

A. To the branch extending 39 miles east of Watson-town, Pa., from McEwensville, Pa., to Berwick, Pa., the B. & O. Railroad eastbound billing book, I. C. C. A-4, carries the Central States Dispatch route via B. & O. Railroad-Cherry Run-W. M.-Shippensburg-Reading Company-Paper Mill-P. R. R.

Q. What is the reason for the existence of the Central States Dispatch route to this branch?

A. It was formerly an independent railroad and, as such, made its own routing arrangements. When it was con-

solidated with the P. R. R. those arrangements were, of necessity, adopted by the P. R. R. This branch is the [fol. 605] former Susquehanna, Bloomsburg & Berwick Railroad.

Q. Would this route be established today if it were not already in effect?

A. It would not.

Q. In the study made covering circuitous routes, was this particular situation considered?

A. Yes. The P. R. R. suggested the cancellation of this Paper Mill route to points on its Berwick Branch when the question was under consideration in 1933. However, due to failure to receive the concurrence of one of the interested lines, this action was not possible.

Q. Is the Berwick Branch an important consuming territory in so far as grain and grain products are concerned?

A. No, it is not.

Q. What is the situation generally, omitting this one exception?

A. The P. R. R. has direct connection with all of the C. F. A. lines and employs those connections. It does not join in routes of the character sought in the complaint.

Q. Would opening the desired eastern destination territory on the P. R. R. as sought by this complaint be a departure from the present tariff and routing situation?

A. It most assuredly would. The obvious reason for the sought routes is the elimination of a back-haul charge in [fol. 606] connection with transit at Hagerstown. This should not be controlling, and is not a sufficient reason to depart from the established direct interchange practice.

Q. Is the revenue derived by the P. R. R. from the back-haul or out-of-route charges on grain and grain products handled under transit substantial?

A. It is.

Q. Have you any figures which would indicate the amount of this particular revenue to the P. R. R.?

A. I have.

Q. Just what do they cover and for what period was the study undertaken?

A. The figures cover out-of-route or back-haul revenue on grain and grain products handled under transit at points on the P. R. R. lines east of Pittsburgh, Erie, and Oil City,

Pa., for the six months period December, 1940, to May, 1941, both months inclusive, in accordance with P. R. R. tariffs I. C. C. No. 2220 and I. C. C. No. 2442.

Q. Do the figures cover the transit charge itself?

A. No, only back-haul or out-of-route revenue. The revenue under the transit charge of one-half cent per 100 pounds would be additional.

Q. For the six months' period in question, how many cars of grain and grain products handled under transit in accordance with the provision of P. R. R. tariffs I. C. C. [fol. 607] No. 2220 and I. C. C. No. 2442 were subject to the back-haul charges shown in those tariffs?

A. 1,421 cars computed on the "outbound" or forwarded from transit point basis.

Q. What was the out-of-route or back-haul revenue on these 1,421 outbound cars?

A. \$16,806.05, or approximately \$34,000 per annum.

Q. Have you any data as to the movement of grain products via the defendant P. R. R. to and from Hagerstown for account of complainant?

A. Yes, for the years 1938, 1939, and 1940, and for the first seven months of 1941, both inbound and outbound. Exhibit No. 60 covers.

Q. What does it show?

A. That the complainant's business via the Pennsylvania Railroad showed a substantial increase each year over the preceding year.

Q. What else?

A. That not only as to the annual basis has the increase been steady and substantial, but that for the first six months of 1941 the traffic has been much heavier than for the corresponding six months' periods of the three preceding years and, here again, the increase has been marked 1940 and 1941 over the same period of the preceding years.

Q. What conclusion do you draw from this showing?

[fol. 608] A. That the present rate adjustment including the routes is one under which the complainant is showing substantial increases in his business, and that the existing rate adjustment is, therefore, one under which an increase of business is not only possible, but has actually taken place.

Q. Have you any further comments on this exhibit?

A. Only to direct particular attention to the percentage comparisons shown at the bottom of the sheet, which are self-explanatory.

Q. Do the Trunk Line rail carriers publish tariffs covering diversion and reconsignment of carload freight?

A. Yes. The arrangements are somewhat different as between (1) fresh or green fruits or vegetables, berries, melons, etcetera, or the commodities generally considered as being embraced by the term "perishable," and (2) dead freight, the tariff governing which includes the rules and charges applicable to grain and grain products.

Q. Will you first discuss the perishable situation? What P.R.R. tariff or tariffs cover in Trunk Line territory?

A. P.R.R. I.C.C. No. 2041, when the traffic originates in the South, P.R.R. I.C.C. No. 2222, when the traffic moves from the West, and P.R.R. I. C.C. No. 2391, covering local or Official territory movement.

Q. Do all of these tariffs contain a back-haul or out-of-route scale?

[fol. 609] A. Yes, an identical back-haul or out-of-route scale when the diversion is performed at a P.R.R. Trunk Line territory.

Q. And what is this scale carried in the three P.R.R. tariffs you have named?

A. 30 miles and under,  $2\frac{3}{4}$  per 100 pounds.

60 and over 30,  $4\frac{1}{2}$  per 100 pounds.

100 and over 60, 6 per 100 pounds.

150 and over 100,  $7\frac{1}{2}$  per 100 pounds.

200 and over 150, 9 per 100 pounds.

300 and over 200, 12 per 100 pounds.

400 and over 300, 13 per 100 pounds.

500 and over 400, 14 per 100 pounds.

600 and over 500, 16 per 100 pounds.

700 and over 600, 18 per 100 pounds.

Q. Were these back-haul charges sanctioned by the Interstate Commerce Commission?

A. Yes. In Docket No. 10173, Diversion and Reconsignment Rules, 58 I.C.C. 568, decided August 5, 1920, the Commission found that the back-haul charges were justified, except in cases in which the through rate from point of origin to final destination applied via the reconsignment point.



Q. I think you have stated the usual back-haul involved on a movement from the West, say west of Harrisburg, Pa., to the East, say east of Steelton, Pa., is 149 miles when [fol. 610] the movement is via Hagerstown, Md., over the P.R.R. If this is correct, what is the extra charge for diversion of reconsignment of a carload shipment of perishable freight on such a movement through Hagerstown, Md.?

A. The figure you have stated of 149 miles is correct. The charge under the three tariffs mentioned covering perishable diversion and reconsignment is 7.5 per 100 pounds, or 3 cents in excess of the Hagerstown back-haul charge on transit traffic.

Q. You say there is a separate tariff covering diversions of what is termed "dead" freight?

A. Yes, P.R.R. I.C.C. No. 2040, applicable at P.R.R. points in Trunk Line territory.

Q. Does this tariff, P.R.R. I.C.C. No. 2040, contain an out-of-route or back-haul scale similar to the three tariffs covering perishable freight?

A. No. It contains no such back-haul or out-of-route scale.

Q. Then if a shipment of dead freight, that is, a carload shipment, is diverted or reconsigned when out of route between origin and destination, how are the charges settled?

A. The line haul rate is on combination in and out of the diversion or reconsignment point.

Q. And this tariff, P.R.R. I. C. C. No. 2040, applies for diversion and reconsignment of grain and grain products?

A. It does.

[fol. 611] Q. Has the rule in the diversion and reconsignment tariff providing for the combination of rates into and out of the diversion or reconsignment point, if a back-haul or out-of-route haul is involved, been considered by the Interstate Commerce Commission?

A. Yes.

The combination basis was upheld in Docket No. 10173, 58 I.C.C. 568, decided August 5, 1920; I. & S. Docket No. 1250, 61 I.C.C. 385, decided April 18, 1921; Docket No. 13237, 74 I.C.C. 352, and Docket No. 14762, 91 I.C.C. 615, decided July 24, 1924.

Q. Will you please cite any arrangement you regard as comparable involving the back-haul or out-of-route charge principle?

A. That covered by item No. 350 of P.R.R. tariff I.C.C. 2175, which covers charge for back-haul or out-of-route haul on fresh dressed meats, packing house products and provisions, in carloads, when stopped in transit to permit partial unloading.

Q. If a car of any or all of these commodities shipped from Chicago, Ill., to New York, N. Y., were stopped at Hagerstown, Md., for partial unloading, what would the charge be for the service under the tariff you mentioned?

A. First, a charge of \$6.93 per car for the stop-off in accordance with Item 335-B, Supplement No. 26 to P.R.R. I.C.C. No. 2175. This covers only the service of stopping [fol. 612] in transit. Then the out-of-route or back-haul charge would be computed under Item No. 350, which states "When a shipment is stopped at a point located on the Pennsylvania Railroad not on the direct line from original point of shipment to final destination, and an additional haul is necessary, a charge of \$6.93 per car will be made for each 30 miles or fraction thereof, to and from points where car is handled out of route, in addition to the stop-off charge. Miles to be computed in accordance with tariff I. C. C. 398."

Q. What would the out-of-route mileage be from Chicago, Ill., to New York City when stop-off to partially unload is made at Hagerstown, Md.?

A. 149 miles, which would be five 30-mile blocks as provided in the tariff rule, producing out-of-route charge of \$6.93 for each of the five 30-mile blocks, or out-of-route charge of \$34.65 per car.

Q. And the stop-off charge of \$6.93 per car would be in addition to the back-haul charge of \$34.65?

A. Producing a total of \$41.58 per car for this service.

Q. Is there a recognized back-haul or out-of-route scale of charges applied on lumber and forest products in Trunk Line and C. F. A. territories?

A. Yes. Exhibit No. 61 covers the C. F. A. scale, and Exhibit No. 62 covers the Trunk Line scale.

Q. I observe you show a P. R. R. tariff as authority for [fol. 613] these charges on both exhibits. How about the other C. F. A. and Trunk Line rail carriers?

A. They all publish mileage scales—that is, in Trunk Line and in C. F. A. territories all of the lines apply mileage scales for out-of-route or back hauls on lumber accorded transit.

Q. What is the charge for 149 miles under the C. F. A. scale?

Exam. Berry: Can't we determine all that instead of putting that in every time; that is half a dozen times you said that, compared that with these other scales.

Mr. Eshelman: I do not think we have an exhibit on this.

Exam. Berry: No, no. I am not talking about your exhibits. After he puts the scale in, he tells about the scales each time; he compares it with the other for 149 miles.

Mr. Eshelman: I am perfectly willing he chop that off, if he can do it.

Mr. Hillyer: He just read an exhibit into the record here.

Mr. Eshelman: I think that is not this one.

Mr. Hillyer: What is the use of putting in an exhibit if you are going to read it into the record.

Exam. Berry: Go ahead.

Mr. Eshelman: May we continue?

By Mr. Eshelman:

Q. What is your answer, please, Mr. Thornton.

A. The C. F. A. lumber out-of-route scale for 149 miles [fol. 614] is 11.5 cents per 100 pounds. The generally applicable charge of 4.5 cents on grain transit at Hagerstown for out-of-route haul of 149 miles is substantially lower than the C. F. A. lumber out-of-route scale for the same distance.

Q. And what is the charge under the lumber out-of-route scale for a haul of 149 miles in Trunk Line territory?

A. 7.5 cents per 100 pounds; likewise substantially higher than the generally applicable charge of 4.5 cents for the out-of-route haul for this distance on grain transited at Hagerstown, Md.

Q. Do the Central Freight Association and Trunk Line Association carriers have tariffs effective providing for the fabrication in transit of iron and steel articles?

A. Yes, they do. P. R. R. I. C. C. No. 2500 is typical of the situation in C. F. A. territory, and P. R. R. I. C. C. No. 2140 and I. C. C. 2457 are typical of the arrangements in Trunk Line Association territory.

Q. Have you prepared an exhibit or exhibits illustrating the application of the iron and steel transit rules?

A. Yes. Exhibit No. 63 covering C. F. A. territory and Exhibit No. 64 covering Trunk Line territory. The applicable tariffs in Trunk Line territory are those shown on Exhibit 64.

Q. What is the general practice in these territories when an out-of-route or back-haul movement is involved in the transit operation on iron and steel articles?

[fol. 615] A. A charge, upon a uniform scale, is generally made for such back-haul or out-of-route movements.

Q. I notice the first entry on the Trunk Line exhibit, No. 64, covers fabrication in transit at Hagerstown, Md. Is the concern at Hagerstown now in active operation and availing itself of the privileges under P. R. R. tariff I. C. C. No. 2140?

A. Yes.

Q. Is there any other transit operation now active at Hagerstown, Md.? By that I mean transit operation other than milling of grain, feed-mixing, or fabrication in transit of iron and steel articles?

A. Yes. At present treating-in-transit and creosoting-in-transit of lumber under transit tariffs of the Hagerstown, Md., lines is being performed by a concern located at Hagerstown, Md.

Q. Is this lumber-treating firm located on the P. R. R. rails at Hagerstown, Md.?

A. No. It is located on the W. M. Railway.

Q. What is the situation with respect to absorption of switching?

A. The P. R. R. does not provide for the absorption of W. M. switching on this lumber transit operation and, hence, the W. M. switching charges of \$6.93 per car both inbound and outbound would be in addition to the line-haul rate, the transit charge of \$6.93 per car when destined to Official [fol. 616] territory, and  $2\frac{3}{4}$  cents per 100 pounds, minimum \$9.90 per car, when destined to points in Southern territory or Southwestern territory, and the back-haul charge, if a back-haul or out-of-route movement is involved.

Q. Are you familiar with the Flory Milling Company case, Docket No. 13919, 93 I. C. C. 129, decided October 14, 1924?

A. Our company was not a party defendant, but I have carefully analyzed the Commission's decision in this case.

Q. Will you please discuss the Flory Milling case with relation to the pending complaint Docket No. 28647? By

that I mean develop the parallel and dissimilar points in the two cases.

A. Let me say to start my explanation that the complainant at Hagerstown, Md., has through routes and joint rates without out-of-route or back-haul charge for transit at Hagerstown, Md., to the entire destination territory sought in the Flory Milling Company case.

Q. What was the first route sought in that case, and to what destination territory was it sought?

A. The Erie Railroad to Goshen, N. Y., thence L. & N. E. through Bangor, Pa., for transit at Bangor, to the Reading Company at Catasauqua and to the C. R. R. of N. J. at Bethlehem to destinations in southeastern Pennsylvania on the Reading and in southern New Jersey on the C. R. R. of N. J.

Q. What did the Commission determine as to this route? [fol. 617] A. That Goshen, N. Y., was a New York rate point, while much of the destination territory was subject to Philadelphia rates and that, therefore, unwarranted fourth section departures would result. The Commission declined to prescribe this sought route.

Q. Describe the second route.

A. Via the D. L. & W. and its western connections to Bangor, Pa., thence L. & N. E. to Catasauqua, Pa., for Reading Company points and to Bethlehem, Pa., and C. R. R. of N. J. points in southeastern Pennsylvania and southern New Jersey.

Q. What was the conclusion as to that route?

A. That as the then present routes involved the D. L. & W.-C. R. R. of N. J. and Reading Company and that as "the same number of carriers would participate as when the C. R. R. of N. J. and the Philadelphia & Reading haul the traffic from Taylor," the same number of carriers would participate as via the then present routes. This route was granted.

Q. Compare what was granted via this route with what is sought in the instant case.

A. The route which was granted comprised the same number of carriers as the effective route at the time of the decision or, in other words, no additional carriers were added in so far as numbers go. The routes of the B. & O. and P. R. R. are single-line routes, involving but one carrier, while the sought routes in Docket No. 28647 comprises [fol. 618] a minimum of three-line haul carriers to five or

more line-haul carriers. Thus the situation is not the same, and the condition that influenced granting of the sought route No. 2 in Docket No. 13919 is not present in the instant complaint.

Q. What was route No. 3?

A. Route No. 3 there sought consisted of the L. V. Railroad and its western connections to Lizard Creek Junction, Pa., thence L. & N. E. Railroad through Bangor, Pa., to Campbell Hall, N. Y., for connection with the New England lines, and also from Bangor via D. L. & W. to New York rate points, including the Long Island Railroad.

Q. What was the conclusion as to this route?

A. That this route would short-haul the L. V. Railroad to New England, New York rate points, and the Long Island Railroad. The Commission declined to grant this sought route No. 3.

Q. Compare this sought route No. 3 with the instant complaint.

A. Exactly the same as the B. & O. Railroad and P. R. R. would be short-hauled.

Q. Please describe the sought route No. 4 in the Flory case.

A. Route No. 4, New York Central to Newberry Junction, Pa., Reading Company to Tamaqua, Pa., L. & N. E. to Bangor, Pa., thence D. L. & W. from Bangor to New York rate points, the Long Island Railroad, and New England.

Q. What did the Commission find as to sought route No. 4 as just described?

[fol. 619] A. After stating that Newberry Junction is not a junction point on New England traffic, the Commission said: "The suggested route would inject the Lehigh & New England as an additional carrier without compensatory advantage of shortened haul."

Q. Was sought route No. 4 in the Flory case granted by the Commission?

A. No. It was not granted.

Q. Compare this route with what is sought in No. 28647.

A. My answer is the same as in connection with sought route No. 2 in the Flory Milling case. In 28647 the sought routes inject not one but always two or more additional line haul carriers.

Q. Describe sought route No. 5 in the Flory case.



A. This was the Central States Dispatch route, i. e. B. & O.-Martinsburg-Cumberland Valley-Shippensburg-Reading Company, Catasauqua, Pa., L. & N. E. Railroad, thence Bangor, Pa., D. L. & W. Railroad to New England, New York rate points, and the Long Island Railroad. Route No. 6 is very similar and one explanation could readily cover both No. 5 and No. 6 in the Flory case.

Q. What was sought route No. 6 in the Flory case?

A. The Blue Ridge Dispatch route, i. e., C. & O., Basic, Va., N. & W., Hagerstown, W. M., Shippensburg, Reading Company, Catasauqua, Pa., L. & N. E. Railroad to Bangor, [fol. 620] Pa., thence D. L. & W. to New York rate points and D. L. & W. and connections to New England and Long Island Railroad points.

Q. What did the Commission find with respect to these sought routes Nos. 5 and 6?

A. To New England the Commission granted them for the reason that the then present Central States dispatch and Blue Ridge dispatch routes applied to New England via Cumberland Valley or Western Maryland, Reading Company, C. R. R. of N. J., and L. & H. R. Railway, and that the sought routes Nos. 5 and 6 would substitute one line; that is, the L. & N. E. Railroad, for two lines, namely, the C. R. R. of N. J. and L. & H. Railway, resulting in a saving of one line-haul carrier in the route. To New York rate points and to the Long Island Railroad the Commission did not find sought routes Nos. 5 and 6 necessary.

Q. Compare the New England situation under these sought routes No. 5 and No. 6 with what is sought in the instant complaint.

A. Sought routes Nos. 5 and 6 in the Flory Milling case resulted in one less line-haul carrier from origin to destination, while what is sought in No. 28647 injects a minimum of two additional line-haul carriers in the movement.

Q. Do your answers constitute a brief but complete resume of the issues in the Flory Milling Company case, Docket No. 13919, 93 I. C. C. 129?

A. Yes, sir. They cover all of the sought routes, all of the desired destination territory, and also give the dis-[fol. 621] position which the Commission made of each point raised.

Exam. Berry: Mr. Eshelman, can't you do that in your brief?

Mr. Eshelman: No, I do not believe I can. I do not know that they are all there shown in the same way that the witness described.

Exam. Berry: All he is telling us is what the routes were in there, and what the Commission has done in the case, and then what the present route is. You got all you did out of the case.

Mr. Eshelman: It might be simpler to have it here than to take the thing out. I thought it might be a little simpler than you would find to pick it out.

Mr. Hillyer: We can pick it out if we want it.

Exam. Berry: You are consuming a lot of time and space here.

Mr. Hillyer: I can pick it out if we want it.

Mr. Eshelman: Well, may I understand, then, that I may include this in my brief, and that if in doing so I am outside of what appears in the record, from any information he got otherwise, that nevertheless this may go?

Exam. Berry: Why, certainly. You can refer to anything that was in the other case and the decision made in it.

Mr. Eshelman: In other words, your statement is entirely from the report; is that right?

[fol. 622] The Witness: Yes, Mr. Eshelman; I thought I was saving time. I made it just as concise as I could.

Mr. Eshelman: I might say I wanted a comparison of some of the things—

Exam. Berry: He has given you that each time. He does not need to read it with every route, do you?

The Witness: I do, yes, Mr. Examiner. That was one point that I wanted to make, the similarities and dissimilarities of the Flory case as against this case, and that is the real reason for analyzing the case, to set them down side by side.

Exam. Berry: What do you mean by "this case"? What routes in this case are compared?

The Witness: Well, we are comparing, Mr. Examiner, where we have one-line route, and where this complainant seeks the minimum of three road-haul carriers up to five or more rate haul carriers, that same principle was involved to a much lesser extent in the Flory case, and that was the comparison I was endeavoring to make, sir.

Mr. Eshelman: Frankly, I always feel a certain measure of embarrassment at looking into the brief, a factual show-

ing of this sort without giving my opponent knowledge of just what I am doing and exactly what I want.

I might say, Mr. Examiner, that all Examiners are perhaps not equally broad minded with yourself in this respect, but, frankly, I shall want to make these comparisons. [fol. 623] Exam. Berry: I see nothing to keep you from referring to what the Commission did in that case. Of course, any facts stated as facts are not proven and would not be evidence in this case of what the Commission did and found; but I do not see any reason for repeating this.

Mr. Eshelman: I should like to reserve the right—

Exam. Berry: You have that right.

Off the record.

(Discussion off the record.)

Exam. Berry: On the record.

Go ahead.

By Mr. Eshelman:

Q. Thus far your testimony and exhibits have dealt with instances in which establishment of routes or charges made in existing routes to fit the rates and routes to transit would short haul the Pennsylvania Railroad. Could routes be established or changes made for the purpose of granting new transit or broadening existing transit arrangements on grain which would have the opposite result—that of increasing the haul of the Pennsylvania Railroad?

A. Certainly.

Q. Will you develop a few examples of such routes, new or changed routes, having for their purpose increased transit privileges which would result in hauls longer than at present obtainable for the P. R. R. Suppose we start with destinations on the B. & O. Railroad.

[fol. 624] A. At present traffic originating on the P. R. R. in C. F. A. territory destined B. & O. Railroad points in Trunk Line territory must be delivered to the B. & O. at junctions west of Pittsburgh, which excludes P. R. R. Trunk Line territory grain transit operators from reaching B. & O. Railroad eastern points. If a route to eastern points on the B. & O. Railroad from Pennsylvania points in C. F. A. were to be established via Hyndman, Pa., such route would open Bedford, Pa., on the P. R. R. to transit at the through rate plus one-half cent transit charge to B. & O.

Railroad points Hyndman, Pa., and east. The B. & O. destination territory thus opened would include Cumberland, Md., and all B. & O. Railroad points east of Cumberland, Md.

Give us another example of increasing the P. R. R. haul at the expense of the B. & O. Railroad?

A. Were a route from P. R. R. points in C. F. A. established to B. & O. Railroad points New York City to Washington, D. C., both inclusive, via Wilmington, Del., that route would open Highspire, Pa., Lancaster, Pa., and Wilmington, Del., to transit for B. & O. Railroad deliveries New York City to Washington, both inclusive, at the through rate origin to destination plus transit charge of one-half cent per 100 pounds.

Q. The routes you mentioned as increasing the P. R. R. haul are not effective today, are they?

[fol. 625] A. They are not in effect at the present time. As I stated, between P. R. R. in C. F. A. territory and B. & O. Railroad in Trunk Line territory the present arrangements call for interchange between the present arrangements of the two roads west of Pittsburgh.

Q. What is the situation as to interchange when the C. F. A. origin is on the B. & O. and Trunk Line destination is located on the P. R. R.

A. In that case the traffic is delivered by the B. & O. to the P. R. R. at a point west of Pittsburgh, Pa. Transit is not available via the route between the P. R. R. and B. & O. on C. F. A. to Trunk Line traffic on business originating on either the P. R. R. or B. & O., on the one hand, and terminating on the other road via Millvale (Willow Grove), Pa., which point is in the Pittsburgh District. In other words, the interchange between the P. R. R. and B. & O. Railroad must be west of Pittsburgh in order to receive transit on the P. R. R. or B. & O. in Trunk Line territory. If any C. F. A. grains is interchanged at Millvale (Willow Grove), Pa., it is not entitled to the transit privilege on either the B. & O. or P. R. R. in Trunk Line territory.

Q. So that the arrangement between the B. & O. Railroad and P. R. R. protects the interests of both companies to the same extent?

A. Yes, sir.

[fol. 626] Q. Please contrast this existing arrangement between the P. R. R. and B. & O. Railroad with what the complainant is here seeking.

A. I shall use an example. A car of grain originates at Hamlet, Ind., on the B. & O. Railroad consigned to Bristol, Pa., on the P. R. R. It would route B. & O. Railroad, Cincinnati, Ohio, P. R. R.—that is, over the B. & O. from Hamlet to Cincinnati and over the P. R. R. from Cincinnati to Bristol, thereby protecting the haul of both participating carriers. Or a car of grain originates at Loganport, Ind., on the P. R. R. destined Hockessin, Del., on the B. & O. Railroad. In this latter case the P. R. R. hauls the car from Loganport, Ind., to Cincinnati and the B. & O. secures the haul from Cincinnati to Hockessin, Del. In this case the route is P. R. R.-Cincinnati, Ohio-B. & O. Railroad.

Q. How does this compare with what is sought in this complaint?

A. The car of grain originating on the B & O. at Hamlet, Ind., would move over the B. & O. to Cherry Run, W. Va., thence W. M. Railway to York, Pa., and thence P. R. R. from York, Pa., to the destination, Bristol, Pa., which, stated differently, is to say that the P. R. R. would be deprived of its long haul from Cincinnati and would secure but a short haul from York. Instead of receiving a haul of 692 miles from Cincinnati, Ohio, to Bristol, Pa., we would receive a [fol. 627] haul of but 116 miles from York, Pa., to Bristol, Pa.

Q. So that under what is sought the P. R. R. would receive a haul of but 116 miles instead of one of 692 miles?

A. Yes, the P. R. R. would be short hauled 576 miles in this case. The haul we would receive under the sought route is but 16.76 per cent of our present haul.

Q. Would the P. R. R. receive any compensating or offsetting gain?

A. None whatever under what is sought in this complaint.

Q. Is your explanation of the arrangements between the P. R. R. and B. & O. Railroad on traffic between Trunk Line and C. F. A. points typical of the general routing arrangements existing between the P. R. R. and the C. F. A. lines?

A. It is.

Q. State what that situation is as to those lines.

A. If the New York Central, the Erie or the Chesapeake & Ohio were substituted for the B. & O. Railroad and a similar example traced through from C. F. A. origin to Trunk Line destination, the result as to short-hauling the P. R. R. without compensating gain otherwise would be identical in number and probably the same in figures, miles and percentages as the B. & O. illustration.

Q. All points—is that all points as well as from points beyond today, are there today in effect routes to the P. R. R. which the complainant can use to draw grain except [fol. 628] he has the back-haul charge?

A. Yes, sir. He has a very full and complete coverage.

Q. Now, let us explore the possibilities of the P. R. R. securing a longer haul and transit operators on its lines more territory of destination on the C. R. R. of N. J.?

A. The present arrangements from P. R. R. points in C. F. A. to all points on the C. R. R. of N. J. provide interchange between the P. R. R. and C. R. R. of N. J. at Nanticoke, Pa. Just to mention one instance that is possible, if a route via P. R. R. Phillipsburg, N. J., and C. R. R. of N. J. were established from P. R. R. points in C. F. A. territory to C. R. R. of N. J. points Newark and Jersey City, N. J., on the east to Mauch Chunk, Pa., on the west, the P. R. R. haul would be materially increased and the miller on the P. R. R. at Philadelphia, Pa., would benefit by securing a considerable additional destination territory not now available to him.

Q. Does traffic destined points on the D. L. & W. Railroad present similar possibilities?

A. Yes. The general arrangement from P. R. R. points in C. F. A. territory to D. L. & W. Railroad stations provides for interchange at Buffalo, N. Y. Were the interchange points made Elmira, N. Y., Manunka Chunk, or Kearny Junction, N. J., the P. R. R. haul would be increased and millers on our line would secure a large additional destination territory on the D. L. & W. at the through rate plus transit charge of one-half cent per 100 pounds, [fol. 629] as against their present charges on combination basis.

Q. Now, let us consider points in Trunk Line territory on the Erie Railroad.

A. From P. R. R. points in C. F. A. to destinations on the Erie Railroad in Trunk Line territory the routing re-



quirements provide for interchange between the P. R. R. and Erie Railroad at Transfer, Pa., or junctions west of Transfer, Pa. Were routes established via P. R. R., Elmira, N. Y., or Marion (Croxtan), N. J., the P. R. R.'s haul would be increased and transit operators on the P. R. R. would greatly benefit by reaching on the flat basis plus one-half cent transit charge territory to which they now have to pay combination of locals.

Q. Would that same condition hold true as to the Lehigh Valley Railroad?

A. Yes. The existing routing arrangements generally provide interchange between the P. R. R. and Lehigh Valley Railroad at Buffalo, N. Y. If routes from P. R. R. points in C. F. A. territory were established to Lehigh Valley Railroad destinations via such junctions as Elmira, N. Y., Wilkes-Barre and Mt. Carmel, Pa., Phillipsburg and Oak Island Junction, N. J., the P. R. R. haul would be greatly increased and transit operators on its line benefited.

Exam. Berry: Now, in all those instances in which you [fol. 630] say that transit perhaps would be benefited if you had these other routes in there, but the railroad practices prohibit them from putting them in, wouldn't it be in the interest of the shipping public to order them in if we had a complaint?

The Witness: I don't think so, Mr. Examiner.

Exam. Berry: Are you stating it is going to benefit—it is going to benefit all these people if you had them?

Mr. Eshelman: Excuse me. I did not quite catch that. I do not mean to interrupt.

Exam. Berry: Each time you made it that it would benefit those except what transit prohibited?

The Witness: It will benefit the Lancaster man. It will put him in against Waverly, N. Y.

Exam. Berry: Wouldn't that be in the interest of the public to put those routes in?

The Witness: No, sir; I do not see it, Mr. Examiner. When you consider that if Lancaster gets into Waverly, N. Y., Waverly, N. Y., is going to make a desperate effort to get into Lancaster.

Exam. Berry: Haven't they a right to do that?

The Witness: Certainly. The result is cross-hauling of carriers, uneconomic transportation, where we have a rec-

ognized system of transportation serving the needs of the public, public need and convenience.

Exam. Berry: Is it your idea it is of benefit to the public [fol. 631] to lie with the railroad to restrict the destination territory served by it to operators on its own railroad?

The Witness: No, sir. It is my idea it is in the public interest for the railroad to restrict the origin and destination territory to points over reasonably direct routes involving as few carriers as possible; that the use of five carriers where one carrier can do the job is uneconomical and not in the public interest. That is definitely by position, Mr. Examiner.

Mr. Eshelman: And, by the way, I might put a question to the witness; it deals with one of the questions of the Examiner.

By Mr. Eshelman:

Q. Is it a fact that destinations on the P. R. R. are not restricted to origins on the P. R. R.; I mean to say, isn't it a fact that the grain originating on any line in C. F. A., practically any line in C. F. A., any point in C. F. A., can reach the P. R. R. in the East; I mean to say, the routes are open by established junctions; is that not true?

A. By established junctions; yes, sir.

Mr. Eshelman: I do not think it ought to be assumed, Mr. Examiner, a place is restricted so a man cannot possibly move.

Exam. Berry: I understood the testimony to be that in the Eastern territory you did not permit transit except on the direct line of the Pennsylvania Railroad on the through rate, but if it was west of Pittsburgh you would [fol. 632] permit the transit.

Mr. Eshelman: Well, for illustration, for instance, others might transit it on the New York Central, or on the Wabash, or on the B. & O. at a point in the West, and as soon as it came to us at an established junction that could then come into the East and receive the transit again on our line, and the same way if——

Exam. Berry: But if it originated——

Mr. Eshelman: If it originates on our line, goes to them at their established transit it can also receive transit in the East, as I understand.

Exam. Berry: But if it originates in Eastern Trunk Line territory on some line other than the Pennsylvania it cannot move to the destination from a transit point on that line to destination on the Pennsylvania; is that not true?

Mr. Eshelman: It can in some cases, as I think he has indicated. But, generally speaking, I think as the witness has stated there is the effort to avoid the cross-hauling and to hold things to the established interchanges.

Exam. Berry: Go ahead.

By Mr. Eshelman:

Q. Have you covered the arrangements—Please discuss the situation with relation to P. R. R. origin territory in C. F. A. to Reading Company destinations.

A. The present routing arrangements provide for interchange between the P. R. R. and Reading Company at [fol. 633] Harrisburg, Pa. if in addition to this route via Harrisburg, Pa., the rates were made also to apply via Belmont, Pa., which is located within the Philadelphia, Pa., city limits, the P. R. R. haul would be increased 106 miles from Harrisburg to Philadelphia, and the millers on the P. R. R. at Highspire, Lancaster, and Philadelphia, Pa., greatly benefited by being enabled to reach Reading Company points at the through rate from origin to destination plus transit charge of one-half cent per 100 pounds, as against the present general application of the milling point combination.

Q. I think you had just one more illustration, that is to destinations. What are the possibilities as to destinations on the Western Maryland Railway?

A. The rearrangement of routes from C. F. A. points on the P. R. R. to destinations on the W. M. by available interchanges between Cumberland, Md., on the west, to Fulton Junction, Baltimore, Md., on the east, would in many, many cases result in the P. R. R. securing a longer haul, and would also present manifold possibilities of P. R. R. transit operators from Bedford, Pa., on the west, to Baltimore, Md., on the east, increasing their markets.

Q. Have you prepared an exhibit illustrating these situations?

A. Yes. Exhibit No. 65, which is a self-explanatory diagram of two typical instances of this nature.

[fol. 634] Q. Are the possible routes, resulting in longer hauls for the P. R. R. and larger marketing territories for millers located on its line, just as logical as the routes the complainant is seeking over lines west of the W. M. to Hagerstown, thence over the W. M. to the P. R. R. via Fulton Junction or York?

A. The possible routes I have just enumerated starting with the B. & O. and concluding with the W. M. are more logical than those being sought in the instant complaint.

Q. Why do you say that?

A. Because they are all reasonably direct routes involving very little, if any, circuitry over the existing routes.

Q. Have you any other reason for your statement that the routes you give as presenting possibilities of increased haul for the P. R. R. are more logical than those sought in the instant complaint?

A. Yes. The number of roads comprising the routes would be fewer.

The shortest routes from the mileage standpoint sought, taking Chicago as a typical origin and Philadelphia as a typical destination, involve at least three road haul carriers and in most cases four or five road haul carriers. Of course, as the number of road haul carriers increases the number of interchanges between road haul carriers becomes correspondingly greater.

Q. You referred to the shortest sought routes from Chicago [fol. 635] to Philadelphia as involving three to five road-haul carriers. Please state the details of the routes you have in mind.

A. That comprising three-road haul carriers is: B. & O., Chicago, to Cherry Run, W. Va.; Western Maryland to Newark, Fulton Junction or Hagerstown and P. R. R. from York, Fulton Junction, or Hagerstown to Philadelphia. That involving four carriers is N. Y. C. Railroad, Chicago to Youngstown, Ohio, P. & L. E. Railroad, Youngstown, Ohio, to Connellsville, Pa.; W. M. Connellsville, Pa., to Hagerstown, York, or Fulton Junction and thence P. R. R. That involving five-road haul carriers is Wabash to Toledo, Ohio, W. & L. E. to Pittsburgh Junction, Ohio, P. & W. Va. to Connellsville, Pa., W. M. to Hagerstown, York, or Fulton Junction, and thence P. R. R.

Q. Am I to understand that you are advocating the establishment of the routes you have mentioned as increas-

ing the P. R. R. haul and aiding millers located on its line to reach territory on connecting lines not now available to them except on a combination basis?

A. No. Under present conditions I am not advocating the establishment of the routes I have indicated as increasing the P. R. R. haul and aiding transit operators on its line.

Exam. Berry: What do you mean by present conditions?

The Witness: Operating and traffic conditions as they are now, Mr. Examiner.

Exam. Berry: Do you mean because of the agreements [fol. 636] among the carriers, as the exchange points?

The Witness: No, sir; not just—let's see if I get that point straight. In that that protects the haul of each carrier and keeps the interchange in the movement and the normal flow of traffic orderly, in well recognized routes, if that is what you mean, the answer is definitely yes.

Exam. Berry: I do not quite get what you mean by orderly, well-defined routes. Isn't any available practical route that is of benefit to the public an orderly well-defined route?

The Witness: No, sir.

Exam. Berry: It is not? Well, what do you mean by this?

The Witness: I mean routes sought in this complaint are not orderly, well defined.

By Mr. Eshelman:

Q. It is not because they are sought that they are not?

A. No. It is because of their position, the fact that in many cases they increase mileage, and in every case they increase the number of road haul carriers and interchange.

Mr. Eshelman: I might say my other witness may be able to contribute something on that.

Exam. Berry: All right.

The Witness: Off the record a minute.

Mr. Eshelman: That is up to the Examiner.

The Witness: If I may say something off the record, Mr. Examiner?

[fol. 637] Exam. Berry: Off the record.

(Discussion off the record.)

Exam. Berry: On the record.

By Mr. Eshelman:

Q. With respect to present conditions, will you just continue. Does your testimony have something that might explain what you mean by the present conditions?

A. No.

Q. Just continue, where you say the existing situation has been developing.

A. The existing situation has been developed over a long period of years by the carriers, with the cooperation of the shippers, and I am not now suggesting that to secure an advantage to the carrier I represent this situation be changed. Of course, if new routes shorthauling the P. R. R. are to be established, I am naturally interested in seeing that other routes be made effective which will increase our haul and serve as an offset to any such short-haul routes.

Q. What has been the attitude of the carriers generally for the past several years, say, since 1933, with reference to routing generally?

A. The effort, which has borne considerable result, has been toward the elimination and restriction of circuitous and unnecessary routes.

Q. That is, generally within Official territory?

A. Yes, sir.

[fol. 638] Q. What would the result of the establishment of the sought routes be, especially if followed to the logical conclusion, including the establishment of routes such as you have cited as increasing the P. R. R. haul?

A. As I previously stated, the routes I mentioned which would increase our haul are relatively direct and involve but two carriers. However, if routes are to be established to accord a transit operator entrance into new territories on the flat basis of rates by establishing the transit point directly intermediate, the result could only be a complete reversal of the present trend, and a departure from sound traffic and transportation principles.

Q. What do you mean by that?

A. That the present effort is to maintain order in the routing picture, while the principle here sought of making transit the controlling factor, even to the extent of establishing routes not now in existence, to the exclusion of all other factors, not only subordinate the rate structure and the routes via which it applies to the accessorial service of



transit, but changes the existing trend from order into chaos.

The inevitable result of such a policy would be to deplete the carriers' revenues through the increase in expense of operation, which would necessarily follow cross-hauling, without any real improvement in the competitive situation of millers generally, since what they would gain in one [fol. 639] quarter would be lost to them in another.

Q. Mr. Thornton, throughout your testimony and exhibits, also in the exhibits introduced by witnesses Heimert and Beggs, there have been shown a large number of routes from points in Central territory, both on the P. R. R. and on other roads, to destinations on the P. R. R. in the East on which Hagerstown has transit, although at a back-haul charge in many instances. These same routes also would apply direct to the destination where the shipments were not transited at Hagerstown, would they not?

A. That is correct. They would.

Q. Do you think there are enough routes to meet the demands and needs of shippers and of commerce, considering specifically the interests of the shippers at the points of origin and the receivers at points of destination of these routes?

Exam. Berry: And the interest of the complainant?

Mr. Eshelman: No. I am not including for the purpose of this question the interest of the complainant. I am asking him first, do you think that considering now these shippers at points of origin, for instance, in C. F. A. territory, and receivers at destinations in Trunk Line territory on the Pennsylvania, that there are sufficient routes to meet the demands and needs of commerce.

The Witness: I do. There is at present at least one and generally two or more open routes from every point in [fol. 640] C. F. A. and W. T. L. territories to every destination on the lines of the P. R. R. in Trunk Line territory. Where the P. R. R. is not the origin line, routes are available with direct interchange to the P. R. R. If an originating point is served by more than one carrier, there are routes via each of the originating carriers to the P. R. R. destinations in the East. I might further say that in the majority of cases there is more than one route from both common and local points on any line to P. R. R. eastern destinations. To illustrate, our routes with the New York

Central Lines apply via such junction points as Columbus or Erie or Buffalo, so that in many instances from a common or a local point on the N. Y. C. in C. F. A., as illustrative, to a destination on the P. R. R. in the East there are two or more open routes.

Q. Are these routes to which you refer good working routes, well established and subject to divisional agreements?

A. They are.

Q. Generally speaking, were all these routes voluntarily established so that the participating carriers necessarily had opportunity to select junctions permitting the best and most efficient physical operation?

A. That is true. In virtually all instances these routes are the result of voluntary negotiations between the involved carriers, and were made taking into account the best and most efficient operation in the light of conditions [fol. 641] and traffic of the participating lines. As I have previously stated, such routes are generally on a reciprocal basis.

Q. Generally speaking, how do the sought routes compare with the existing routes in the number of carriers which would be involved?

A. Except as between the P. R. R., on the one hand, and the B. & O. Railroad, on the other, where a minimum of one additional carrier would be involved, the sought routes would always involve a minimum of two additional carriers, and frequently more. In many cases, in addition to the interjection of these additional unnecessary carriers, the mileage would be substantially increased over and above that of the existing direct routes.

Q. To the extent that these sought routes by greater mileage or greater number of participating carriers and interchanges would involve a greater physical service than under existing routes, what would be the general effect of the prescription of such routes upon railroad transportation?

A. One very obvious result would be increased expense to the participating carriers for the performance of a transportation service. The natural result of this condition is less efficient and more expensive service to the public at large. I have been very closely associated with traffic work for over 25 years, the last 21 of which have been

directly in rate constructions and commerce work, and [fol. 642] I can say from my own knowledge that it has never been the policy of the Trunk Line carriers generally, or of the P. R. R. in particular, to join in routes which interject an intermediate carrier between it and another carrier in instances in which direct connections exist between it and such other carrier. To my own personal knowledge the only exceptions have been under the duress of meeting fourth section requirements, and these instances have been very few and far between. Of course, in these cases the interjection of an intermediate carrier in the route resulted in a very material decrease in the mileage from origin to destination, and this would not result under the sought routes.

Exam. Berry: 148 miles, wouldn't it be shorter?

The Witness: No, sir. We must consider, Mr. Examiner, that the short route, Chicago to Salisbury, Md., as I recall it is 902 miles. Now, the mere fact Mr. Stickell chooses to take that down to Hagerstown and transit it does not make use responsible. Our short line is the short line of any of the railroads, and it is there for the public to use. Now, as to whether—

Exam. Berry: Do you think it is more economical and more efficient for you to haul 148 miles out of line than it would be to join in the rate and take it on the direct route?

The Witness: I do, sir, because we get  $4\frac{1}{2}$  cents a hundred pounds for that 149-mile haul.

Exam. Berry: You are not considering the shipper, then, [fol. 643] from an economic standpoint. You are only considering the carrier's interest.

The Witness: Well, I don't know, Mr. Examiner.

Mr. Eshelman: Well, if you want the answer I want the witness to give it. I do not want him arguing with you. I think there is a legal point there I would like to argue with you at the appropriate time. I do not know that we will get anywhere.

Exam. Berry: I just want these broad statements—

Mr. Eshelman: I thought there might be a misunderstanding in what he was saying at this time; he was talking about our direct routes, not via Hagerstown. I was going to ask him about that. May I ask him to conclude that on the last page?

The Witness: Further, it has not been the policy of the Trunk Line carriers in general, or the P. R. R. in particular, to establish through routes and joint rates as incidents to transit, but transit has always been treated as an incident to an existing through route and joint rate.

Q. Do you regard the policy to which you have referred as in full harmony with sound traffic principles and economic transportation?

A. That is my considered opinion.

Q. Now, take that, if you will, which will be the same route you described except for the back-haul, Hagerstown, leaving out of mind for the minute the fact that is at a [fol. 644] back-haul, and is at an extra charge, what is your conclusion or opinion as to the sufficiency and adequacy of those routes from a transportation standpoint?

A. They are fully adequate and sufficient.

Q. And are good operating routes—I mean to say that if—

Mr. Hillyer: Of course, Mr. Examiner, he is not asking for facts now; he is just asking for this man's opinion for what it is worth.

Mr. Eshelman: Well, I shall have some other testimony.

Mr. Hillyer: He cannot support that with any facts he has.

By Mr. Eshelman:

Q. Let me ask you this: Would the complainant be willing to say if the back-haul charge were not there that the routes would be adequate?

Mr. Hillyer: The Commission says it is no through route at all.

Mr. Eshelman: I think that is all I have on direct, sir.

You had nothing to add?

The Witness: No.

Exam. Berry: Is there any cross-examination?

Mr. Hillyer: Yes. I have got a few questions.

Cross-examination.

By Mr. Hillyer:

Q. You said something about your mileages being shorter just now. You meant the direct mileage and not the mileage with the back haul; didn't you?

A. The direct mileage; yes, sir.

[fol. 645] Q. Now, do you call this route, say, from this Chicago to points on the Eastern Shore, with a back haul down from Harrisburg to Hagerstown, do you call that a through route?

A. Yes, sir; I do.

Q. Well, now, you have read some opinions here of the Interstate Commerce Commission. I will just make a brief reference to one on that point, referring to this through route. The Commission says, 146 I. C. C. 614, "It can hardly be called a through route where the traffic moves in and out of Hagerstown over the same line and the joint rate applies only with the addition of a back-haul charge for the out-of-line movement"; and then they further say, over on the next page: "A route requiring such service and a special charge therefor is obviously in a class by itself and is not comparable with the routes on which there is no back haul."

Mr. Eshelman: Mr. Examiner, I believe counsel——

Mr. Hillyer: Wait a moment. I have just got three questions to ask.

Mr. Eshelman: But this is not a question for him to answer. That is a legal question. I think you have made a good point. I think there cannot be a through route unless more than one company joins in it. I think under the law it has got to have two people joining to make a through route, and obviously if this is a one-line haul it is not a through route. I do not want my witness to argue with you about it.

[fol. 646] Mr. Hillyer: Your witness said he called it a through route.

Mr. Eshelman: Well, then, I will overrule him to that point. If it is a one-line route I do not think it is a through route.

The Witness: May I say that is what I meant. It was a one-line route, that is what I meant by through route.

By Mr. Hillyer:

Q. But some of the longest routes in the world are one-line routes.

A. Not on the Pennsylvania, Mr. Hillyer.

Exam. Berry: Don't argue. Just answer.

By Mr. Hillyer:

Q. Going through this exhibit hastily—of course, I have not had time to study it in great detail—I notice some 30 or more pages in this volume devoted to back-haul charges. I counted them. I think there are more than that. But in running through it hastily I got that many.

Now, you have brought that subject in here. You compared the back-haul charges—and you do not have to answer this if you do not wish to—but I want to know why you did that. Why are you justifying the back-haul charge? Do you think that is involved in this case?

Mr. Eshelman: I will be glad to answer that, if you wish me to, as to why I had him do it.

Mr. Hillyer: How?

Mr. Eshelman: I will be glad to answer that if you wish [fol. 647] me to as to why I had him do it.

Mr. Hillyer: If we get into an argument between you and me, why, it will take longer than I want it to.

Mr. Eshelman: I thought maybe I would know better why I wanted him to do it than he would.

Mr. Hillyer: I kept very quiet while you were asking questions. I just have about three to ask him. If he cannot answer it, he may say so.

The Witness: What is the last question?

Mr. Hillyer: Would you read the question, please?

Exam. Berry: Read the question.

(Question read.)

Mr. Eshelman: I still think that is a legal question.

Exam. Berry: He says the witness does not have to answer it if he does not want to.

Mr. Eshelman: I want to serve notice, I would not be bound by what my witness says, but I think the law is—

The Witness: I won't answer it that way.

By Mr. Eshelman:

Q. I wanted to be sure I asked you the question. I did not care whether I got an answer or not. I wanted it in the record after he got through.

Exam. Berry: Mr. Eshelman undertook to answer it once before. I think he said it was some theory—what was your answer before?

Off the record.



[fol. 648] (Discussion off the record.)

Exam. Berry: On the record.

By Mr. Hillyer:

Q. Now, just one or two more questions, please.

I do not have the time to count the pages, but there are a good many pages in this volume devoted to transit charges. Did you put them in with the idea of justifying a transit charge, or did you think a transit charge was involved in this case?

A. I think, Mr. Hillyer, wherever transit charge is used it is used with primary application of back-haul or out-of-route charge. The examination, and the exhibits, the explanation of them, do show that.

Q. As I understand it, then, the pages I counted have transit charges on should be added to the 30 pages where I have the back-haul charges?

A. If you care to indulge in mathematics, that would seem to be O. K.

Q. Now, I notice you devoted a great deal of time in this exhibit, a great many pages are devoted to showing the transits that are now in effect through Hagerstown.

A. Yes, sir.

Q. And my question about that is, are those transits any different from the general transits that all these millers have?

A. Those transit are different in this respect, they are [fol. 649] what Hagerstown has.

Q. They are what?

A. They are different in this respect. This is what Hagerstown has, these points we covered here, and he has as many on the average without out-of-route or back-haul charge as any other Trunk Line miller, but a few miles east, west, north, or south of Hagerstown you will find he has a slightly different origin and destination territory. In other words, Hagerstown now has without out-of-route or back-haul, the benefit of everything which its location entitles it to.

Q. All right, then, I understand your defense here is because this complainant has other transits than the one he is here asking for on this route, and your argument then is, from this exhibit here, that he is not entitled to the one he is asking for.

Mr. Eshelman: Mr. Examiner, I will object to that question as argumentative.

Exam. Berry: So is a lot of his testimony, Mr. Eshelman.

Mr. Eshelman: I do not want him—I am not going to be bound by what he says is my defense in this case. He said, "Is it your defense."

Exam. Berry: I thoroughly agree with you, Mr. Eshelman, that the cross-examination is out of line and is improper in character, but so was a large part of this testimony.

Mr. Hillyer: I do not want to take too much time on that. [fol. 650] Exam. Berry: Go ahead.

Mr. Hillyer: I could take an hour here and draw these things out in piecemeal until I finally got it and you would never know it, but going at it this way I am trying to take 5 minutes—of course, you can make your point about it, but certainly the question I asked the witness was pertinent to his direct examination, and he need not answer it if he does not want to. He talks very long and lengthy on direct-examination, and he has very little on cross.

By Mr. Hillyer:

Q. Now, you offered some exhibits here showing a great many transit at other points where there were back-haul charges. Do you recall that?

A. Yes, sir; out-of-route or back-haul charges.

Q. How?

A. Out-of-route or back-haul charges.

Q. Yes. Did you make any investigation at any of those points to find out whether those, if there were anybody who used them? Of course, we know there are a lot of them not used at all, but in the case you take a point where it happened to be the transit was actually used, did you investigate to find out whether that man had other routes without a back-haul charge?

A. In one case I know specifically he paid a back-haul charge where he did have a route without a back-haul charge.

Q. You found one, did you?

A. I found one; yes, sir.

[fol. 651] Q. Now, the balance of your exhibit that I have not covered in these few preliminary questions seems to be devoted to the question of rates and the grouping in the East

and the West territories. Is it your idea that that is involved in this case?

A. Yes, sir; as affecting the charges, it is.

Q. You heard our witness say no rates were involved, no transit charges, no back-haul charges?

A. Well, I cannot quite agree with your witness, Mr. Hillyer, because coming to our territory, what he wants to do is reduce the rates  $4\frac{1}{2}$  cents a hundred pounds. If that does not reduce charges I do not know.

Exam. Berry: Is that all?

Mr. Craig: I would like to ask a few questions, Mr. Examiner.

By Mr. Craig:

Q. Mr. Thornton, you said in reply to a question of your counsel, the Commission passed on the three-way rule, 17000, Part 7.

A. I said they sanctioned it; yes, sir.

Q. What do you mean by that?

A. They upheld it.

Q. Sanctioned?

A. Upheld, found proper, legal.

Q. In what page of the decision of 17000, Part 7, is that where they did that?

[fol. 652] A. I gave the citation at the time, Mr. Craig. It is in there, I assure you.

Q. It is your contention, then, and you have read the decision that the Commission upheld, and held that the three-way rule was proper, in 17000, Part 7?

A. They found the three-way rule in part O. K.; yes, sir.

Q. As I understand from your testimony now, Mr. Thornton, and it is your idea where the distances are reasonable compared with the short-line distance, and where there are only two railroads involved, and where the route is via a junction point, that normally traffic should be and is interchanged between two roads, that there is no objection to establishing through routes under those circumstances?

A. Well, through routes are established under those circumstances pretty nearly universally today, Mr. Craig; that is your fabric of through routes, such routes as those you have just described.

Q. Did you say that one of the big objections you had to the routes sought was the fact that three or four or five railroads are involved?

A. Very definitely; yes, sir.

Q. And did you not say in answer either to a question from your counsel or the Examiner, that it would be different if only two railroads—didn't you use an illustration showing in Eastern Trunk Line territory the routes where [fol. 653] only two railroads were involved in the routes?

A. I showed that the Pennsylvania Railroad would long-haul itself by two lines, but I said I was not advocating the establishment of such routes.

Q. But you held that up as being an ideal situation.

A. No, I did not.

Q. Where two loads were involved?

A. Because I specifically said I was not advocating the establishment of those routes, that I was willing to let the status quo obtain.

Q. Now, I am sure you said at some place in your direct testimony—would you mind telling me now what you think is a good through route that you and your counsel were talking about this afternoon?

A. From where to where, Mr. Craig?

Q. Take Chicago to Salisbury, Md.

A. The Pennsylvania Railroad, the best route there is.

Q. Now, take this route you have in connection with the N. & W., by the same token a good route from Chicago to Lynchburg, W. Va., would be the Pennsylvania, Columbus, Ohio, and N. & W.; that is very economical?

A. Pennsylvania what? To Lynchburg?

Q. Yes; West Virginia.

A. Yes.

Q. But the Pennsylvania has a route in connection with [fol. 654] the N. & W. via Hagerstown, Md.?

A. Yes, sir.

Q. Isn't that route a little longer than the one through Columbia would be?

A. Undoubtedly. You will recall, Mr. Craig, I gave the reason for the establishment of that route, to meet the competition of the B. & O. through Shenandoah Junction, which route is also longer than the B. & O. route through Columbus with the N. & W.

Q. Now, it is your position that you are entitled to the long haul on traffic going, say, to the Eastern Shore?

A. Yes.

Q. East of Buffalo or west of Buffalo?

A. Yes, sir.

Q. But it is also your position, isn't it, that the N. & W. is not entitled to the long haul on business going via Pennsylvania, we will say, to Petersburg, Va.?

A. No, that is not my position. The N. & W. is entitled to its long haul, because while we do have a Hagerstown route they granted us to equalize the B. & O. competitive situation, there is also a route between the same points via Columbus, Ohio, or Cincinnati; I don't know which one of those Ohio River points.

Mr. Craig: That is all.

(Witness excused.)

[fol. 655] Mr. Eshelman: May the record show the exhibits were offered and received?

Exam. Berry: Yes.

(Exhibits Nos. 45 to 65, Witness Thornton, Received in Evidence)

Exam. Berry: We will take a short recess.

(There was a short recess taken.)

Exam. Berry: Gentlemen, let us resume.

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F. H. CLARK being first duly sworn, testified as follows:

Direct examination.

By Mr. Eshelman:

Q. Give your name.

A. F. H. Clark.

Q. What has been the length of your operating experience with the Pennsylvania Railroad?

Exam. Berry: Will you waive his qualifications?

Mr. Hillyer: Yes.

A. Thirty-two years.

By Mr. Eshelman:

Q. And part of that operating experience has been also accounting work?

A. Yes, sir; about 12 years of it.

Q. Will you describe, and I think perhaps it would be just as well if I would turn you loose and describe these interchanges via Fulton Junction, York, and Hagerstown. Perhaps we will lose less time if I do not interject any [fol. 656] questions. Any time you want questions if you will let me know I will put them in.

First, I think we ought to identify the map as Exhibit No. 66, and state what is the nature of the Pennsylvania Railroad's arranged freight service.

A. The Exhibit 66 is a map of the Pennsylvania System.

(Exhibit No. 66, Witness Clark, marked for identification.)

The Witness: The Pennsylvania has established an arranged freight train schedule to handle with expedition a range of traffic in all directions, particularly is it true of traffic moving from the West to the East because that is the predominating direction of the loaded movement on the Pennsylvania System.

For example, out of Chicago, we have six arranged scheduled trains through to Enola Yard, which is opposite Harrisburg, Pa., on the other side of the Susquehanna River. We have two such schedules from East St. Louis, two from Detroit, three from Buffalo, and between these points are many other schedules. Before dealing with the other schedules—in fact, we have over 800 arranged freight train schedules on the system exclusive of local freight train schedules.

Q. And are those set up with the view of not only taking care of traffic originating at those western points such as Chicago and St. Louis, but also local points and interchanges [fol. 657] with other lines in C. F. A. territory?

A. They are, and this interchange movement might be measured to some extent by the fact that on a line drawn east through—east of Buffalo, Erie, and Pittsburgh we have approximately 414 interchanges with foreign connections, and about 259 east of that line, so that we provide an adequate service for any traffic that may be offered us in C. F. A. territory for eastern destinations.



Q. Now, as that traffic moves, what is its route on the Pennsylvania and what — points does it converge?

A. Its main route is Pittsburgh to Enola Yard, which, as I said before, is opposite Harrisburg, Pa., with connections out of Altoona to the east and north; at Enola we have a very important yard. At that point traffic diverges in all directions. A measure of that might be statistically stated that we have over 65—an average of 65 regularly scheduled trains in and out of that yard each way, per day, and that does not include the many extra sections and extra trains dispatched, nor does it include the local freight trains.

Q. Enola is just across the river from Harrisburg?

A. Yes, sir.

Q. You say each way, you mean east and west?

A. No, I mean in and out. I should have said it that way.

Exam. Berry: You say in and out each way?

The Witness: Into Enola Yard and out of Enola Yard.

[fol. 658] By Mr. Eshelman:

Q. So that on traffic which meets this flow, or flows into this route from Pittsburgh or Enola, or which comes into the branches, such as from Buffalo or Hagerstown, or into this section, there is service out of Enola to all Eastern territory on the P. R. R.; is that true?

A. East and north, or south and west, all directions; as far as Hagerstown is concerned we have three scheduled trains from Enola Yard to Hagerstown and three scheduled trains in the other direction, and also many extras and additional sections of these trains are operated over the same route.

Q. Will you continue.

A. I believe that is all I have to say in connection with Exhibit No. 66.

Q. Now, will you describe the physical operations briefly at the junctions which the complainant has suggested be used for the establishment of through routes from Western Maryland, Pennsylvania Railroad, taking first Fulton Junction to York, and also describe the situation at Hagerstown.

A. At Fulton Junction we have one interchange track used for both deliveries and receipts; in other words, the

Western Maryland and Pennsylvania Railroad use the same track. That will hold approximately 28 cars.

Q. While you are talking about that, will you identify your next map, Exhibit No. 67.

(Exhibit No. 67, Witness Clark, marked for identification.)

A. Exhibit No. 67 is a straight line diagram of the track layout; on the left the interchange point, and extending on the right to our Bay View Yard. I will tie up my explanation with this exhibit shortly.

Well, it can be located, the interchange track at the extreme left, which is a light black line connecting the Western Maryland route marked to Hagerstown with the Pennsylvania Railroad route marked to Washington. That track, as I have said, will hold about 28 cars, and it has three sidings, private sidings, extending from it.

Q. Those do not show on the map?

A. They do not show on the map.

Q. And this interchange track that you mentioned is, the little light line, is it, between the right track, through the word "Fulton Junction"?

A. That is right. Necessarily, the use of this track for interchange purposes, and also for serving the industries, three of them located—and important ones—reduces the use of the track for interchange purposes, both in time and in space.

It is located in a cut, and while this is a straight line diagram the track actually is curved considerably.

The average interchange at that point for the year 1940 was 28 cars delivered and 27 cars received during the first six months per day; during the first six months of 1941, 29 [fol. 660] cars delivered and 28 cars received per day; so you will see that the capacity of the track is about used. Because of the fact that we have but one track there; that is, there has to be an arrangement with the Western Maryland as to the time it is used. That road makes deliveries to the Pennsylvania Railroad between midnight and 2 p. m., ordinarily. Of course, there are always exceptions, and the Pennsylvania Railroad makes deliveries between 2 p. m. and midnight.

It will be noted from the diagram that the light line is joined to No. 4 track. No. 4 is one of our westbound or

southbound—a better description—main tracks, and over this route are moved the very important passenger and freight service running from the extreme South to the extreme East, and also North.

The track is then joined, you will notice, by the exhibit, to running track No. 5. When cars are to be removed by the Pennsylvania Railroad crews from the interchange track, they having been placed thereon by the Western Maryland, that crew comes from what is known as our Gwyns Run Yard, which is about a mile and a half south of this interchange track. The yard is not shown on the exhibit. They cannot go onto the interchange track until they receive permission from the operator at Fulton Junction Tower, which is the rectangle shown in the "V" made by the Western Maryland and Pennsylvania Railroad tracks, and that permission will not be granted if there are any [fol. 661] through movements emanating from the passenger station, which is noted on the exhibit, through the tunnel known as the B. & P. tunnel, and shown on the exhibit.

Consequently, the crews are frequently delayed. After they do get on the interchange track they must repeat the performance; in other words, they cannot leave that interchange track without permission from the operator.

On those occasions when we have more cars to deliver than the interchange track will hold, it is generally the practice with the approval of the Western Maryland to push the cars down over on the main track into a yard, Western Maryland yard, which is not shown on the exhibit but is somewhat to the left of the words "to Hagerstown." They cannot do that on the occasions of excess cars over and above the interchange capacity when they are making deliveries to the Pennsylvania Railroad because of this condition I have just described.

Necessarily, that means that we must meet them with a crew, and that means that crew must be taken away from its industrial work or yard work and assigned to the interchange work.

Should the business increase at this point to such an extent, to any great extent, it would mean either the use of additional crews or the industrial service would suffer. It will also be noted that this interchange is located practically at the south portal of the B. & T. Tunnel.  
[fol. 662] Q. What is the length of that tunnel?

A. That tunnel is a mile and a half long, and has a grade of 1.39 percent against the southward movement, which means that most trains moving south must have helping engines, which proceeds generally as far as Gwyns Run and return through the tunnel on the opposite track.

As a measure of the number of movements through that operation a check was taken and amounted to an average of 177 per day.

The cars delivered to the Pennsylvania by the Western Maryland are taken back into Gwyns Run Yard. They are classified and cars for destinations such as those on Del-Mar-Va Peninsula must then be moved from Gwyns Run Yard through the B. & T. Tunnel, through the passenger facilities noted on the exhibit, and then through Union Tunnel to the north of the passenger facilities just about,—the tunnel being about six-tenths of a mile long and having an ascending grade against the northward movement of 1.2 percent.

The traffic then proceeds into Bay View Yard, shown at the right of the exhibit.

Bay View Yard is approximately 10 miles from Gwyns Run Yard.

At that point traffic is classified and dispatched in road trains.

Now, the movements through Uniontown approximately [fol. 663] 205 per day—so that we have there, a measure of the intensity of the traffic—these tunnels are operated on practically what we know as an absolute block operation. In other words, one train in the tunnel cannot be followed by another train on the same track until it has cleared the tunnel operations.

Traffic interchanged at Fulton Junction is practically short-haul traffic.

Q. That is traffic for the Baltimore area?

A. Generally speaking; I think that covers that pretty well.

Q. Now, will you explain the situation at York.

A. Now, York—I do not have any exhibit covering that, but the interchange track is located in what is known as West York on Western Maryland property, and will hold about 30 cars. It is located approximately 3 miles from our classification yard, and in order to get to it and from it we must pass through city streets, 18 crossings, at grades.

Traffic delivered to the Pennsylvania Railroad by the Western Maryland after having been placed upon this track, and the condition there is somewhat similar to Fulton Junction; in other words, their deliveries are made between midnight and noon, and ours between noon and midnight and so it is generally the practice to serve the interchange track approximately at noon or 1 p. m. To do this we must send a locomotive light from our classification yard at York, 3 miles distant. The interchange track is located on a severe grade so that engine can handle [fol. 664] probably not more than six or seven hundred tons. That would mean in cars, say coal cars, maybe six or seven.

The cars that have been removed from that track are taken back to the classification yard at York through the same route that I have described. That route not only crosses streets, but it crosses, traverses a very heavy industrial area in which we have not less than two, generally three, yard engines working, and the Western Maryland also have power working in that same area, so that there is interference of either one or the other.

Cars delivered to the Western Maryland are generally taken out in the morning by these industrial crews on their way out to West York for service, and unless there is room on the interchange track when they arrive through the agreements which we have, it will be necessary to set the cars aside until there is room to place them.

These cars are mixed indiscriminately with the industrial delivery cars and, therefore, have to be classified in the neighborhood of the interchange track before the deliveries can be made.

The average deliveries per day at that point in 1940 were 22.7, the receipts 22.5; the first six months of 1941, 26.7 delivered and 24.7 received.

York interchange was established on an order of the Commission for the purpose of taking care of local traffic at that [fol. 665] point. That order is cited in 107 I. C. C. 219. The traffic having been placed in our yard at York, is then classified and those cars for the eastern destinations are moved therefrom in an arranged service train which moves via Columbia. We have a branch that runs from York to Columbia, which is shown on Exhibit 66. That is a single-track line, about 13 miles long, has only two passing sidings, the largest of which will hold about 35 cars, and

this particular train will run from 70 to 75 cars, leaving York. So that no other train can make use of these facilities while that particular train is in transit.

At Wrightsville there is a bridge which extends across the Susquehanna River to Columbia, a mile and a quarter long. At the east end, the track which I have described crosses the two main freight tracks running from Enola Yard south and then connects with the yard track at Enola Yard.

Q. At Columbia?

A. At Columbia. The particular train I have been talking about customarily stops on the bridge, cuts off the cars that are going to the peninsula points, and makes the move I have just described, making necessary for them also to recross, on recoupling to other trains, recross the main line track and recouple to the train. The cars cut off are then later picked up by a train operating out of Enola Yard and moved down through Perryville, which can be found on map Exhibit No. 66, thence over the main line of the Pennsylvania between Perryville and Edge Moor [fol. 666] Yard, which is the yard that serves Wilmington and that area.

At that point the cars are set off, reclassified into a train operating over the Del-Mar-Va Peninsula, and for destinations such as Salisbury are moved therefrom in arranged scheduled trains.

Q. Now, will you describe the interchange, if you are ready to do that, at Hagerstown.

A. At Hagerstown the deliveries to the Western Maryland Railroad are made in a section of their yard. There are five tracks, on any of which the deliveries may be made "except that", and Western Maryland designates the particular track.

Q. Well, on traffic going to the complainant, received for moved to the complainant, how would that be handled.

A. That traffic is moved from Enola Yard in one of the three trains I have previously mentioned, and is given special attention. Those cars are not taken into the Shomo Yard, which is the main yard at Hagerstown, but are set off in what we call our No. 1 yard, located near the Pennsylvania Railroad freight station.

These shipments are generally order notify shipments, and by that practice they are available for quick movement as the consignee orders them in. Had they been sent to



Shomo Yard they would be buried in the hold track until the bill of lading was lifted and the car ordered in. [fol. 667] When such orders are received the cars are moved by our yard power to the interchange track I have previously mentioned.

To reach that track we have to go through our interlocking plant which controls the movements at that point and is located near what the Complainant's Exhibit No. 1 shows as South Junction. From that point, of course, the Western Maryland handles the cars to the Stickell plant.

Q. Now, then, on a movement from the Stickell plant to the Pennsylvania, would the movement be the same whether that were an outbound shipment over the Pennsylvania that had come in by the Pennsylvania, or whether it had come in by the Western Maryland, that was to go outbound, assuming that the route was established through Hagerstown?

A. Yes.

Q. The physical operation is the same?

A. The physical operation would be the same; the Western Maryland would make delivery to the Pennsylvania Railroad at our assigned interchange track, which is directly opposite their interchange track to the east of this interlocking plant, whereas the Western Maryland interchange was to the west of that interlocking plant.

Exam. Berry: It would be more economical if you received the car at Hagerstown and carried it up around Harrisburg than to receive it at Fulton Junction or York? [fol. 668] A. Absolutely. The interchange track will hold about 50 cars—that is, the P. R. R. interchange track will.

Exam. Berry: At Hagerstown?

The Witness: Yes, sir.

By Mr. Eshelman:

Q. May I interrupt; from the standpoint of service, I do not know if you have gotten to this point or not, but from the standpoint of service via Fulton Junction, York, and Hagerstown, how would that compare via those junctions? I think you described, for instance at Fulton Junction, what was done in the interchange, but I do not believe you carried the movement beyond; I believe you described the line-haul movement, a typical movement west of York.

A. I have not quite finished that Hagerstown yet. I would like to take up that schedule a little later, if you don't mind.

Q. All right.

A. The average deliveries at Hagerstown amounted in 1940 to 10.3 cars delivered, 11.8 received, as compared with the first six months of 1941 they were eleven delivered and 12.3 received.

Now, there are no set times for interchange at Hagerstown as there are at the other two points.

Q. Have you any arranged freight schedules with the Western Maryland through Hagerstown?

A. No, we do not. Of course, there are heavy interchanges [fol. 669] with the Norfolk & Western at that point, and there are arranged schedules with that railroad through Hagerstown, but there are none with the Western Maryland. In fact, that is true also of Fulton Junction and York.

Exam. Berry: You mean no arranged schedules with the Western Maryland?

The Witness: There are no agreements between the railroads, themselves, that certain cars shall travel on certain trains.

Exam. Berry: But you do have agreements as to when you shall place and take the cars off the exchange track.

The Witness: No. No. The deliveries at Hagerstown—

Exam. Berry: No. I am talking about York and Fulton Junction.

The Witness: Oh, we have agreements. We divide up the time, because the situation there is different. We have one track for deliveries and receipts. At Hagerstown, of course, you have independent tracks for deliveries and receipts. There has to be some agreement between the railroads, because of the fact that the interchange per day almost equals the capacity of the track.

At York, for instance, one point I forgot to mention, if the deliveries did exceed the York capacity or interchange track capacity, it would be necessary in the case of deliveries to that railroad to push the cars down to their yards. They [fol. 670] could not do the same thing to us because they would be moving out on the main track.

Exam. Berry: The only question here is the outbound movement at Hagerstown.

The Witness: Well, an outbound movement, Mr. Examiner, implies the return movement. Under car service rules, of course, the car would ordinarily go back to the junction point, where received.

Exam. Berry: That is, after the car is made empty, you mean it would come back?

The Witness: Yes. Generally speaking, you will notice that these interchanges here are very well balanced, which to my mind also indicates that they are mostly local traffic.

Exam. Berry: The testimony is here, however, that the complainant largely loads out the inbound cars. The cars are coming in from the West, and he loads them out to eastern destinations.

The Witness: I have not heard such.

Exam. Berry: Wasn't that your testimony?

Mr. Hillyer: Yes, sir. That is the sworn testimony of the man who attends to it every day.

The Witness: Even that would imply the use of more cars, because the inbound consignment will run to heavier tonnage than the outbound.

By Mr. Eshelman:

Q. I believe they are not talking about the same thing. [foi. 671] They are saying that inbound shipments, for instance, into Hagerstown, that is unloaded, that they employ that car for the outbound movement, but what the witness is talking about, under car service rules the identical car, for instance, that is used to send to the Eastern Shore, assuming that is a Wabash car, something like that, would have return rights under the rules to move back over that route.

Exam. Berry: It would move back to Hagerstown?

Mr. Eshelman: Oh, yes, unless there is a contrary loading—I mean a different loading, also in accordance with the rules, but it would have a right to come back that way.

By Mr. Eshelman:

Q. Isn't that what you mean?

A. Yes, sir.

Exam. Berry: As a matter of fact, you would not move it back to the West via Hagerstown?

The Witness: If it had return rights via Hagerstown. We make home route cards for all foreign cars, which indicates where we got them. We are under obligation to return that

car in accordance with the home route card unless owner gives us the right to return otherwise.

By Mr. Eshelman:

Q. Is that so the out road haul will also bear return of the empty?

A. I would not want to state the reason for it. It may be; but the rule is there nevertheless.

Q. Will you continue.

[fol. 672] A. I think that that pretty well covers Hagerstown.

Q. Now, are you ready to describe the scheduled movements that would be available out of Hagerstown and compare the efficiency in that respect of the various routes through the Pennsylvania.

A. I would like to do that in connection also with Mr. Stickell's exhibits, and I might cover two things at once.

Exhibits 3 and 4, you will note by reference to those exhibits, he has shown a route to Chatham via Fulton Junction. Now, Chatham, if you will refer to Exhibit No. 66, is located on one of the branches between Pomeroy and Avondale, which can be found by finding Wilmington and going slightly to the left and to the north.

We have no freight train service between Perryville, Rock, to Avondale. If we were to receive a car for Chatham via Fulton Junction, it would have to move either directly into Philadelphia, and then out again via what is known as Wawa Chad's Ford to Avondale and thence to Chatham.

The service between Pomeroy and Avondale is every other day, Mondays, Wednesdays, and Fridays only; or it would have to move to Enola Yard, which is opposite Harrisburg, thence to Lancaster in one train, and thence to Pomeroy in another, and then get this every-other-day service between Pomeroy and Avondale.

Q. Well, considering the Fulton Junction, York, and Hagerstown as possible gateways by which to receive traffic [fol. 673] over routes from the Western Maryland, which are the worst and which are the better, and how do they compare?

A. Well, as of the three, Hagerstown would be the best, and that is exemplified by the scheduled service.

We have trains operating out of Hagerstown. Take Salisbury as a destination point, which has an elapsed scheduled time of 31 hours and 30 minutes; Cape Charles, 39 hours, 15

minutes. We have another schedule which will make, the same points, in 24 hours and 45 minutes, and 29 hours and 55 minutes, respectively.

Exam. Berry: Out of Hagerstown?

The Witness: Out of Hagerstown. That operating with a route for the Western Maryland from Hagerstown via Fulton Junction through Baltimore would be 33 hours; Cape Charles, 45 hours and 45 minutes; Via York, 36 hours and 30 minutes; to Cape Charles, 49 hours and 15 minutes.

By Mr. Eshelman:

Q. And the physical operation would be better via Hagerstown?

A. Yes, sir.

That also answers one of the contentions of Mr. Stickell in regard to these two days' delay.

Q. Right on that—

A. That eliminates one of his days from Hagerstown to destination.

Q. Do you always make this schedule?

[fol. 674] A. In cases of storms, like we had last spring, where every road was tied up, not only in Pennsylvania but other competing lines, we would not make it, could not make it, physically make it.

Q. Do you have any emergency conditions on the railroad?

A. We have also had at times excessive traffic. There have been delays in classification; but, ordinarily speaking, that is the schedule we hold ourselves to make.

Q. Just leave out for a moment the route to Hagerstown, down from Harrisburg, what in short—and perhaps we can shorten this by asking you to state it in summary fashion—are the routes of the Pennsylvania from its own origins and junctions in C. F. A. territory, frequent, fast, and adequate to destinations on its lines in the East?

A. They are. Our competing railroads say so also.

Q. And if you will also include now, in this next question, routes of the Pennsylvania to Hagerstown from these western points, are those also rapid, fast, effective, and efficient routes?

A. They are.

Q. And then if you will consider the routes, or the route of the Pennsylvania from these origin points to these eastern destinations via Hagerstown, and I am referring now to grain which would be transited under the P. R. R. tariff

at Hagerstown, are those routes, in your opinion, adequate, [fol. 675] fast, efficient, thorough-going first-class transportation routes?

A. They are.

Q. Did that conclude what you had to say about this operating description, or did you have some other thought that I missed?

A. I would like to cover a further remark in regard to Exhibits 3 and 4 of complainants, in regard to Milford destination, also routing through Fulton Junction. We would not have a continuous freight train movement for that destination, and such traffic would suffer approximately a day's delay if moved through Fulton Junction because the car would either lay over at Edgemoor Yard or Philadelphia Yard to make the connection to Milford. The schedules are not set up to handle that traffic out of Fulton Junction.

Q. Did your studies enable you to come to any conclusion as to the relative comparative value or efficiency of your Pennsylvania Railroad routes via Hagerstown with routes sought which would come to the Pennsylvania either at Hagerstown, Fulton Junction, or York?

A. Well, I think we covered that by the next exhibit pretty well.

Q. All right. Will you proceed to explain that.

(Exhibit No. 68, Witness Clark, marked for identification.)

A. Exhibit 68. By this exhibit we have endeavored to show the comparative costs for the transportation of 33 tons [fol. 676] of grain products from western origins to certain eastern destinations.

Before we proceed further, I would like to make a correction under item No. 5, where we show C. & O. to Charles Town, W. Va. That should be Charleston, t-o-n.

Q. May I ask right there, is that 33 tons of grain and grain products,—is that really 33 tons of box-car freight?

A. Yes, sir.

Q. Why did you use 33 tons, was that because Mr. Thornton's study developed the 66,000 pounds inbound?

A. That is right.

I will try to shorten the explanation as much as possible as to how we calculated these costs.



Q. I am willing you should shorten it to any extent which Mr. Hillyer's wishes for the purpose of making the train, or extend it if he wants it longer.

A. The underlying data on which the first two sheets are based will be found on the underlying sheets; in other words, the basic information which came from the annual reports of the railroads to the Commission were used.

Perhaps it would be difficult to follow the first step, so that I will explain that in a little detail.

In order to get the investment return on the investment, in allocating it between what I have designated it here as non-related freight and passenger services, we took those particular services that a railroad gives that are not [fol. 677] necessarily involved in the transportation of freight traffic, such as dining cars, stockyards, grain elevators, mail, express, and so on; but those expenses are in the costs reported to the Commission.

Now, I might stop at this point and say that in general this formula is based upon that used by the Bureau of Statistics of the Commission in their statement No. 3812 of March, 1938. I have varied from that to some extent, and this is one of the variations, in that they determine what I have designated as non-related by deducting miscellaneous charges reported by the railroads. I have gone a step further and deducted not only those miscellaneous charges but costs accruing because of the transportation, as I have said, of such things as mail and express, and so forth.

Now, that was done in this way: We took those charges that the railroads report as actual for the four accounts involved, that is, stockyards, grain elevators, and dining cars, hotels and restaurants, and for the remaining items we applied to the revenues for those items which are reported separately by the carriers the operating ratio of all traffic. The expenses thus ascertained being added to those expenses directly reported constituted the amount that we have set down here as operating expenses under the heading of non-related.

Q. So as to exclude them from the computation.

A. So as to exclude them from the computation "Property Investment," which includes the book investment, cash, material and supplies, are divided between those three segregations by the relationship of the operating ex-

penses adjusted. Taking, for instance, the Pennsylvania Railroad, you will notice the percent stated there, non-related, 5.1; freight, 67, and passenger, 27.9. Those percentages were used to break down the property investment between the three groups.

Q. Now, in general, since these formulaes of the Commission are well known, will you just state if there are any other departures from that formula?

A. Yes. I have one or two others.

Q. All right. Then mention those briefly.

A. In getting the non-revenue freight car miles, which appear on the fourth sheet, I obtained such non-revenue loaded freight car miles by dividing the non-revenue net ton-miles, which are directly ascertained, by 40 tons on the assumption that 40 tons constitutes about the loading of a car of non-revenue freight, and that seems borne out very well by the exhibit presented by Dr. Edwards in the Class rate case at St. Louis, in which he arrived at the amount of 39 tons; and then applying to this loaded non-revenue freight car-miles, 75 percent, to obtain the empty car-miles applicable to non-revenue freight. That 75 was used in the Southwestern Divisions case, and is based upon a study made by the Southwestern Division carriers. The rest of the calculation can be followed on the sheet with those [fol. 679] variations.

Q. The formula is shown on the underlying sheets; is that right?

A. Yes. The details are. Anyone familiar with such calculations can follow them. The cost elements at the bottom are self-explanatory, I believe, as the method of getting them is set out on the sheet.

Q. In general, these costs are system costs broken into line and terminal elements for the purpose of applying them to the line terminal and interchange service; is that correct?

A. That is correct.

Now, there are two other features I want to cover before I forget them, as to where I differ from the Commission's formula, and that is intermediate yardings. You will notice under item 4-F, at the bottom of sheet 4, we show the average haul between intermediate yardings.

The Commission in their formula were dealing with districts and that information was available. To obtain it for individual carriers I took from their reports to the Commission the actual miles run by through freight conductors,

and divided it by the number of trips, which would give the average distance that train would run, and would, in my opinion, be approximately what the average haul is between yardings of a train. I also used to equate l. c. l. tons to cars, four tons. The Commission in their formula used most generally in the neighborhood of 3.5.

[fol. 680] I believe those constitute the major differences. Anyway, if there are any others I have not got them up, they are minor.

Mr. Eshelman: I should say, Mr. Examiner, if there should be any questions which might arise how these have been computed, if there is any doubt about it, I would be glad to respond to any request for information of that sort.

Exam. Berry: Very well.

Did you hear his remarks?

Mr. Hillyer: Yes, I hear it. Yes.

By Mr. Eshelman:

Q. Will you just then proceed and briefly indicate the comparisons, Mr. Clark.

A. First of all, I want to call attention to this Exhibit No. 68. It is based upon the movement of one continuous movement from origin to destination over the Pennsylvania Railroad without considering the back-haul or out-of-route movement to Hagerstown.

Q. How about the next exhibit?

A. The following exhibit, No. 69, will cover the movement from origin to Enola, or Harrisburg, as is stated in the record, then to Hagerstown, and from Hagerstown to destination.

(Exhibit No. 69, Witness Clark, marked for identification.)

Q. Well, would the distinction then be this, that the first of these two exhibits assumes through movement, using the through movement of the P. R. R. without going up to [fol. 681] Hagerstown at all, just one carload all the way through, compared with what would happen on one carload going through on the compared routes?

A. That is right.

Q. Also in stopping at Hagerstown, on the second exhibit is a car going to Hagerstown for unloading at transit, and then out again to destination?

A. That is right.

Q. Taking into account the inbound and outbound proportions indicated by the weights found by Mr. Thornton's study.

A. Yes, sir.

Q. And that makes 1.34 cars out for one in; is that right?

A. That is correct.

Q. And also that it will split it up in the way shown, these costs shown above for operating expenses only, and also as including not only operating expenses but rent,  $5\frac{3}{4}$  percent return and passenger efficiency, when that can be compared on both bases?

A. That is right.

Q. Is there anything else you wanted to add to that, or maybe I had better ask you this: From this study and from your own knowledge and experience and investigations of this situation, will you state what your conclusion is as to the relative efficiency of the present routes, from origin to destination not via Hagerstown in the case of the Pennsylvania with the proposed routes via Hagerstown so far as [fol. 682] through movement of the same shipment is concerned without transit?

A. Well, the exhibit, Exhibit 68, is certainly indicative of the fact that the Pennsylvania, the direct route, is more economical. I know it certainly is from the operating angle. I do not care to make any specific comparisons. They can be read from the exhibits, themselves.

Q. I just have one more question.

Then, coming to the comparison of the P. R. R. route to and from Hagerstown on a transited shipment as compared with the proposed routes involving transit at Hagerstown, will you state your comparison of the efficiency or economy of those routes?

A. The same conclusion would be arrived at. It is true that in one of the routes there is a lesser cost; for instance, in the Decatur to Chatham, Pa., route via the B. & O. and Cherry Run for \$172 as against \$180.93 via the Pennsylvania. That is the only one of all of them that shows that relationship, and from the operating features I would maintain that the P. R. R. route certainly is more advantageous than the other.

Mr. Eshelman: I think that is all I have on direct.

Did you have anything, Mr. Cross?

Mr. Cross: No.

Exam. Berry: Cross-examination, Mr. Hillyer.

**Cross-examination.**

By Mr. Hillyer:

Q. Now, when you started out to testify I thought you [fol. 683] were qualifying as an operating man.

What department are you in?

Mr. Eshelman: Did you hear me question him as to his experience?

Mr. Hillyer: Let the witness answer the question, will you?

A. The Pennsylvania Railroad organization is probably a little bit different from most roads. We have an accounting department in the operating department, and I have been in the operating department 32 years, and about 12 of those years have been in the accounting section operating department.

Q. You have been in both of them?

A. Yes, sir.

Q. Now, will you explain again this 1.34 in the heading of this Exhibit No. 69.

A. I will be glad to.

Our traffic department study indicated that the inbound shipments averaged 33 tons per car, and that the outbound shipments averaged 24.6 tons per car. Therefore, to move 33 tons outbound would take 1.3 cars, or, as we have expressed it, 1.34. That will have a bearing in your calculation of gross ton-miles, for instance.

Q. Now, in this last opinion you expressed as to the routes, your routes, the Pennsylvania, and the route we are asking for, have you that work with the Western Maryland Railroad?

[fol. 684] A. Not for that railroad; no, sir.

Q. Of course, these costs over the routes we are talking about would involve costs over other lines than the Pennsylvania, would they not?

A. I do not understand that.

Q. The costs over the routes we are asking for would involve costs on other railroads than the Pennsylvania routes?

A. Yes, sir.

Q. But you are expressing it as your opinion, not based on any facts, that the Pennsylvania route is cheaper than the Western Maryland routes?

Mr. Eshelman: Just a moment.

I object to his statement, not based on any facts.

Mr. Hillyer: Well, if I cannot examine the witness I will quit. Any question I ask, both of them jump up there.

Exam. Berry: Let him answer.

A. I have the facts as reported by the railroads to the Commission, which the Commission themselves accept as facts.

By Mr. Hillyer:

Q. Now, you say you are basing it on that?

A. My cost study is based upon their annual reports to the Commission.

Q. The annual reports of the railroads?

A. My cost studies are; yes, sir.

Q. Is your cost study based on that, too,—is your cost study on what the Commission found or on what you found? [fol. 685] A. I took the report to the Commission, applied in main a formula used by the Bureau of Statistics of the Commission with the exception of the points I have mentioned and got these results.

Q. Now, is that result the cost to the Pennsylvania or cost of these other railroads?

A. Well, it is the cost of all the roads involved in the routes as designated here.

Q. And the Pennsylvania showed a cheaper cost than all the other railroads in the route?

A. With the one exception that I have quoted.

Q. Now, this operating evidence that you gave, did you base that on a personal inspection of the movement of these cars in and out of the Stickell mill?

A. I based it upon that, so far as the P.R.R. property is concerned—of course, the Stickell mill is located on the Western Maryland tracks. I have been there, yes, and observed your lay-out.

Q. Do you consider the operation at Hagerstown an expensive operation?

A. Are you speaking now of the Western Maryland?

Q. Either one or both of them. I will draw the difference after I get your first answer.

A. Well, I won't testify as to the Western Maryland, of course.

Q. Now, which operation would you consider the more [fol. 686] expensive, getting a car into and out of the Stickell plant on the Pennsylvania or the Western Maryland?



A. Oh, the Stickell plant is not located on the Pennsylvania.

Q. How?

A. The Stickell plant is not located on the Pennsylvania.

Q. I know it is not.

A. Well, how can I make a comparison then?

Q. I understood your testimony to be that the Pennsylvania could handle it cheaper in and out of the Stickell mill than the Western Maryland could.

A. Oh, no. I do not remember saying anything like that.

Q. You did not testify on that point at all, did you?

A. In the way you stated it; no, sir.

Q. I thought you referred to Mr. Stickell's testimony and attempted to correct it in some respects.

A. Not in relation to his plant at Hagerstown; I spoke of Mr. Stickell's prescription of a route through Fulton Junction.

Mr. Hillyer: Manifestly, I haven't got the time to go through this cost exhibit here, and I do not think it has much to do with this case, and that is all I care to ask.

Exam. Berry: Is there anything further from the defendants?

Mr. Eshelman: May I understand that the exhibits are offered and received?

Exam. Berry: Yes, let the record show that all the ex-[fol. 687] hibits are offered and received.

(Exhibits Nos. 66, 67, 68, and 69, Witness Clark, Received in Evidence.)

(Witness excused.)

Exam. Berry: Is there anything further from the defendants?

Mr. Eshelman: That is all we have.

Exam. Berry: Will October 20th be all right for briefs?

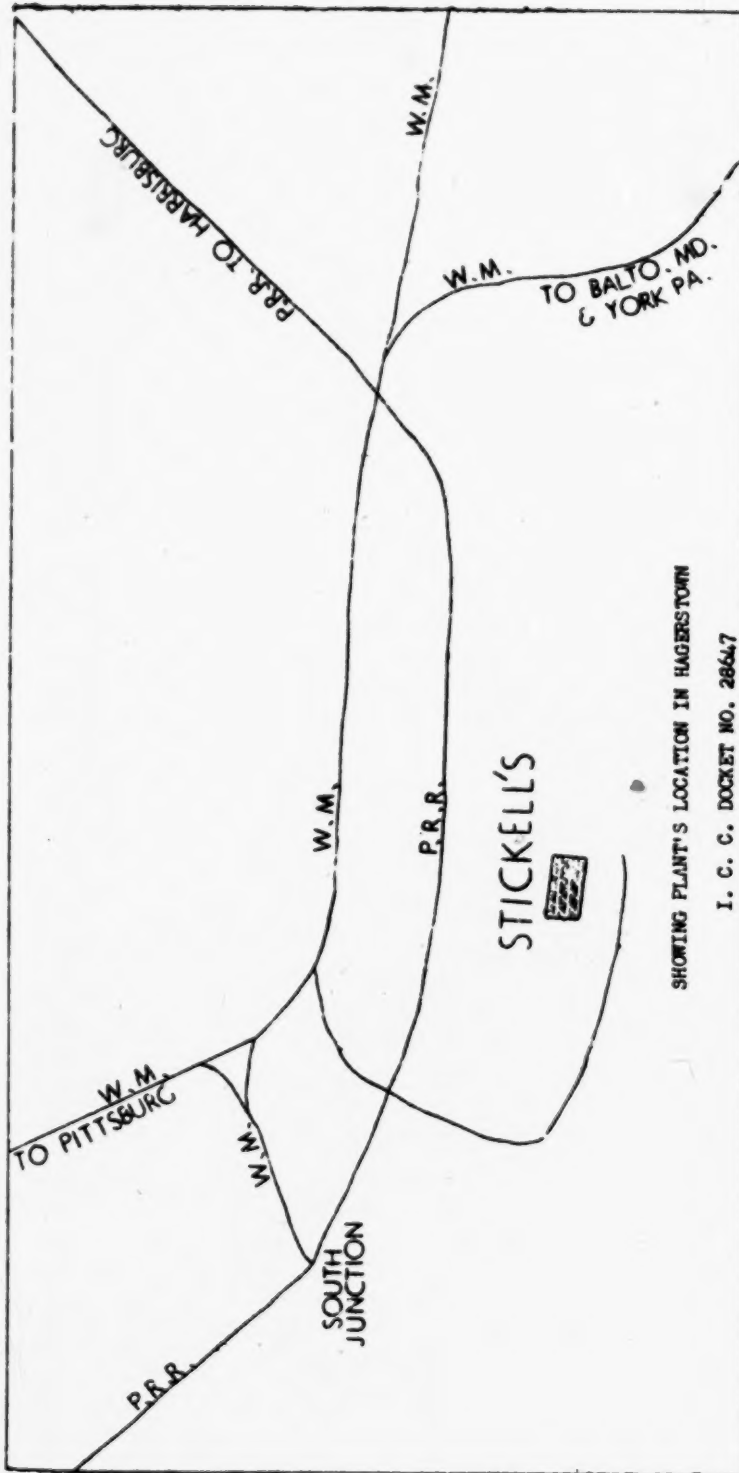
Mr. Hillyer: Yes, sir.

Exam. Berry: Briefs will be due on October 20th.

(The hearing is closed.)

(Whereupon, at 6:10 o'clock p. m., September 10, 1941, the hearing was closed.)

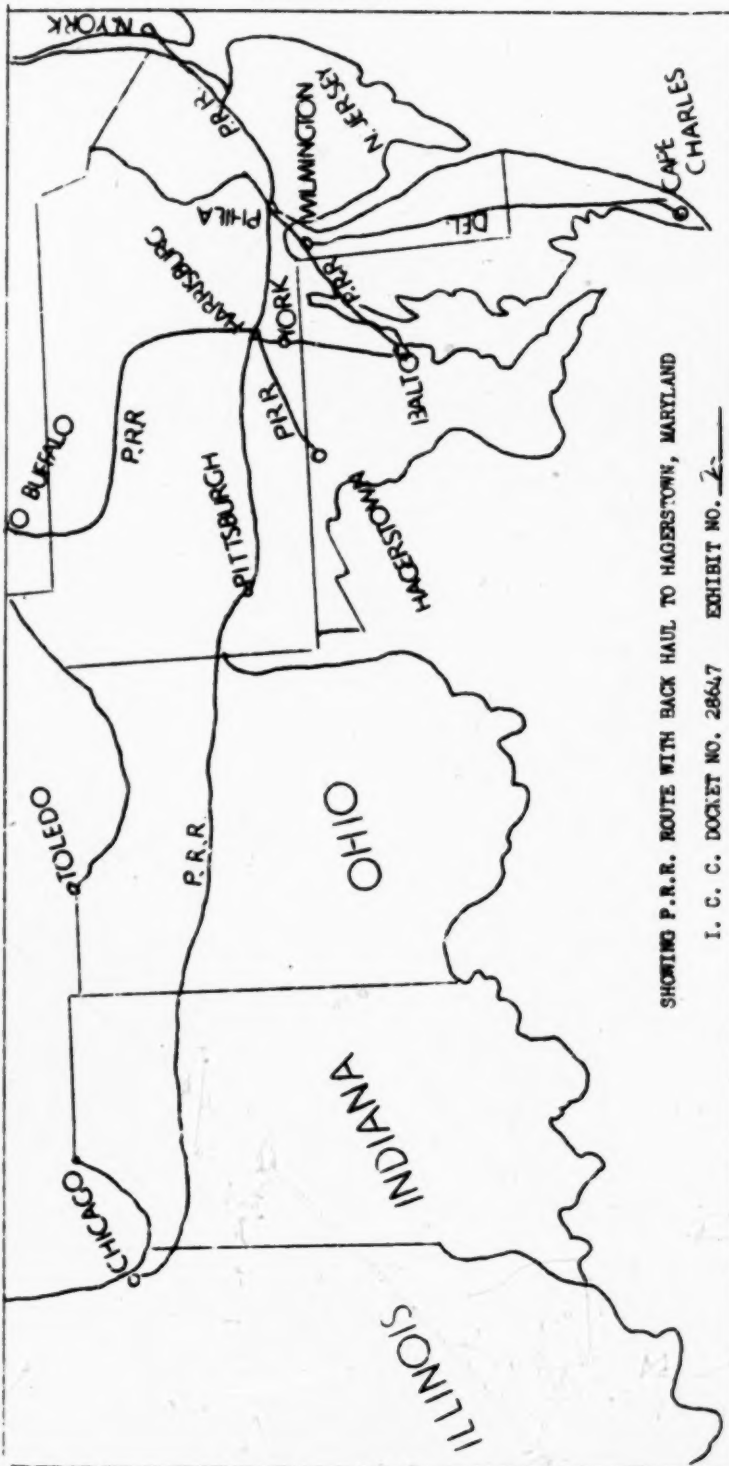
(Here follow 4 photolithographs side folios 688, 688a, 689, 690)



SHOWING PLANT'S LOCATION IN HAGERSTOWN

I. C. C. DOCKET NO. 2864.7





SHOWING P.R.R. ROUTE WITH BACK HAUL TO HAGERSTOWN, MARYLAND

I. C. C. DOCKET NO. 28647 EXHIBIT NO. 2

## EXHIBIT No. 3

N.Y.C.R.R. CO. - P.L.E. - W.M.R.R. - to HAGERSTOWN - ICC DOCKET  
 P.R.R. to DESTINATION  
 # 28647  
 Exhibit #....

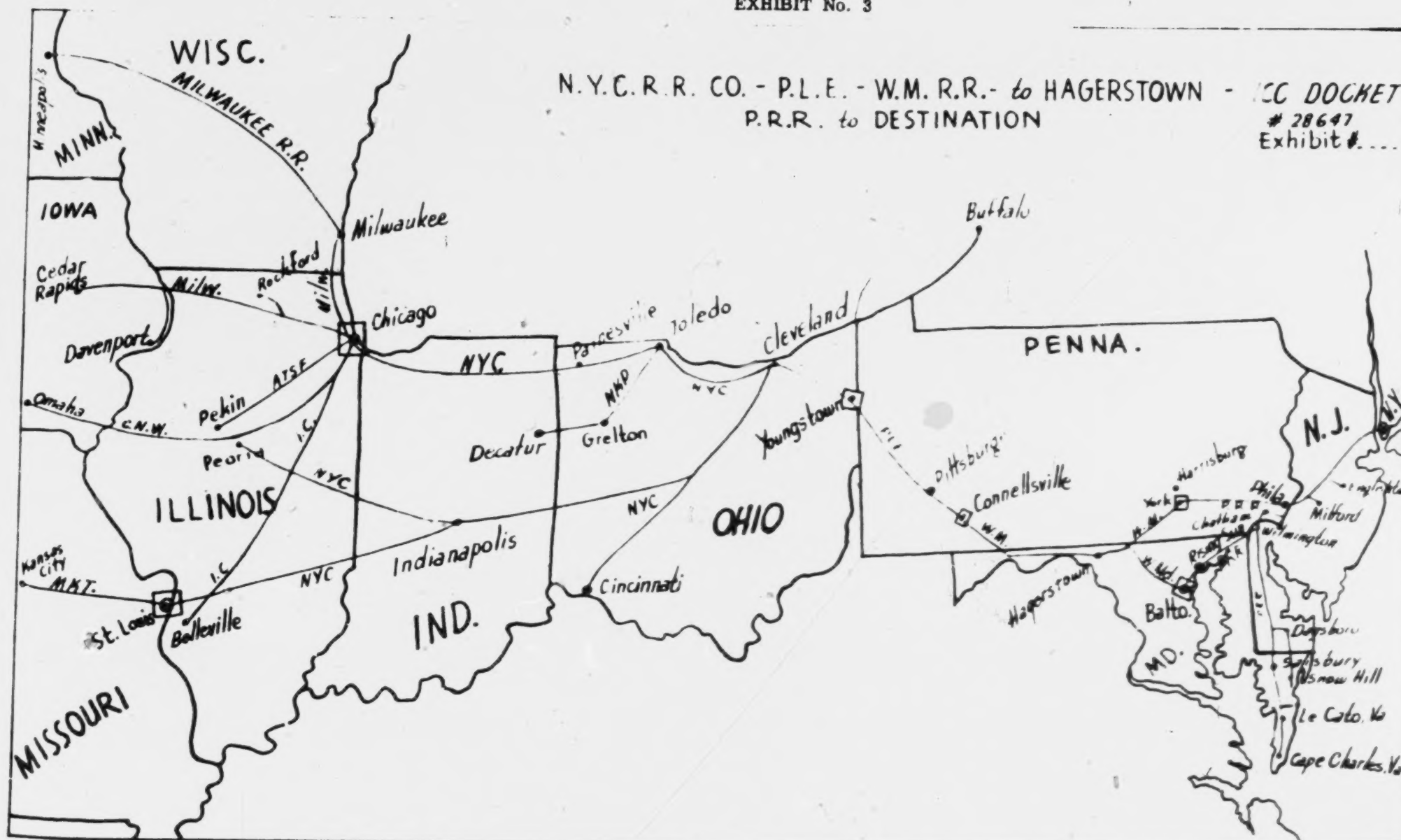
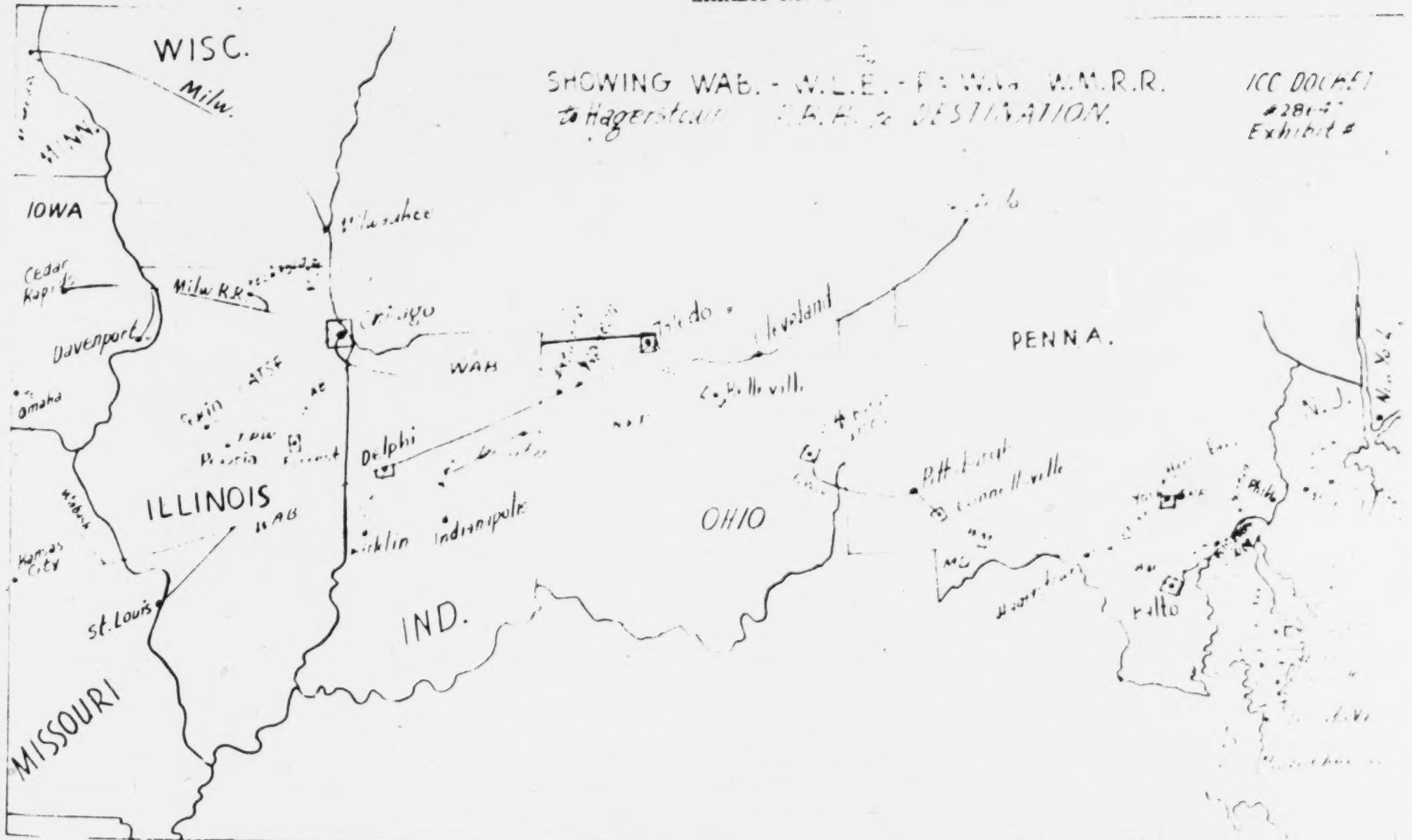


EXHIBIT No. 4

SHOWING WAB. - W.L.E. - P. & W.V. W.M.R.R.  
to Hagerstown P.H. & DESTINATION.

ICC DOCKET  
#281-47  
Exhibit #







[fol. 691]

EXHIBIT No. 5  
DOCKET #28647

D. A. Stickell & Sons, Inc., Hagerstown, Md. Exhibit.  
New York City is representative of destinations on the Pennsylvania R. R. in New Jersey and Eastern Pennsylvania. Salisbury, Md. is representative of destinations on the Eastern Shore of Maryland, Delaware and Virginia.

Route	From	To New York Miles	To Salisbury Miles	Rate on Grain Products
A	Chicago	966	934	.26 $\frac{1}{2}$
B	"	975	943	.26 $\frac{1}{2}$
C	"	1054	1041	.26 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents
A	St. Louis	1162	1130	.30 $\frac{1}{2}$
B	"	1154	1122	.30 $\frac{1}{2}$
C	"	1197	1184	.30 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents
E	Decatur, Ind.	840	808	.30 $\frac{1}{2}$
F	"	797	765	.30 $\frac{1}{2}$
C	"	927	914	.30 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents
A	Peoria, Ill.	1190	1158	.28 $\frac{1}{2}$
D	"	1132	1100	.28 $\frac{1}{2}$
C	"	1205	1192	.28 $\frac{1}{2}$ plus 4 $\frac{1}{2}$ cents

Route A—N. Y. C. R. R. Youngstown, Pa.—P. & L. E. Connellsville, Pa. W. M. Ry. to York, Pa. or Baltimore, Md.—P R R to Destination.

Route B—Wabash R R to Toledo, O.—W & L E to Pittsburg Jct. Pa. P & W. V to Connellsville, Pa.—W M Ry. to York, Pa. or Baltimore, Md.—P R R to Destination.

Route C—P R R to Destination with back haul from Harrisburg, Pa. to Hagerstown, Md.

Route D—T P & W R R to Forrest, Ill.—Wabash and Route B.

Route E—N K P R R to Toledo, Ohio and Route A.

Route F—N K P R R to Bellevue, O.—W & L E to Pittsburg Jct., Pa. P & W V R R to Connellsville, Pa.—W M Ry to York, Pa. or Baltimore, Md.—P R R to Destination.

Note 1—Route C includes a back haul of 146 miles between Harrisburg, Pa. and Hagerstown, Md. and adds 4  $\frac{1}{2}$  cents or 90 cents per ton to the through rate.

Note 2—All routes except C are requested routes, but are standard used routes as far as Baltimore, Md. or York, Pa.

Note 3—All rates are reshipping rates except from Decatur, Ind.

Tariff Authority: Jones 245 G—I C C 3356

Jones 470 B—I C C 3490

Transit tariff, P R R 1272 C—I C C 2442

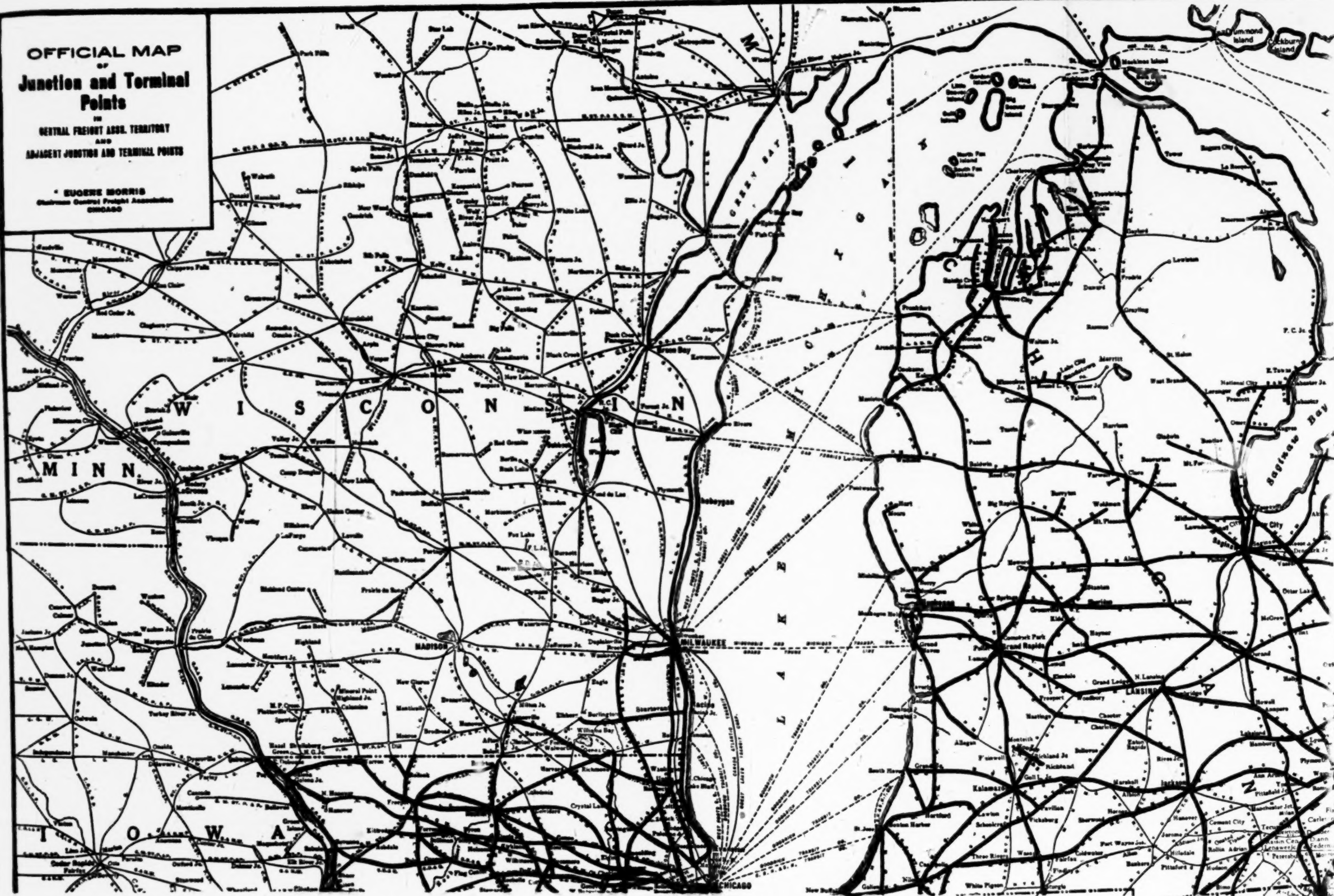
Transit tariff, W. M. Ry. I C C 8662



**OFFICIAL MAP  
OF  
Junction and Terminal  
Points**

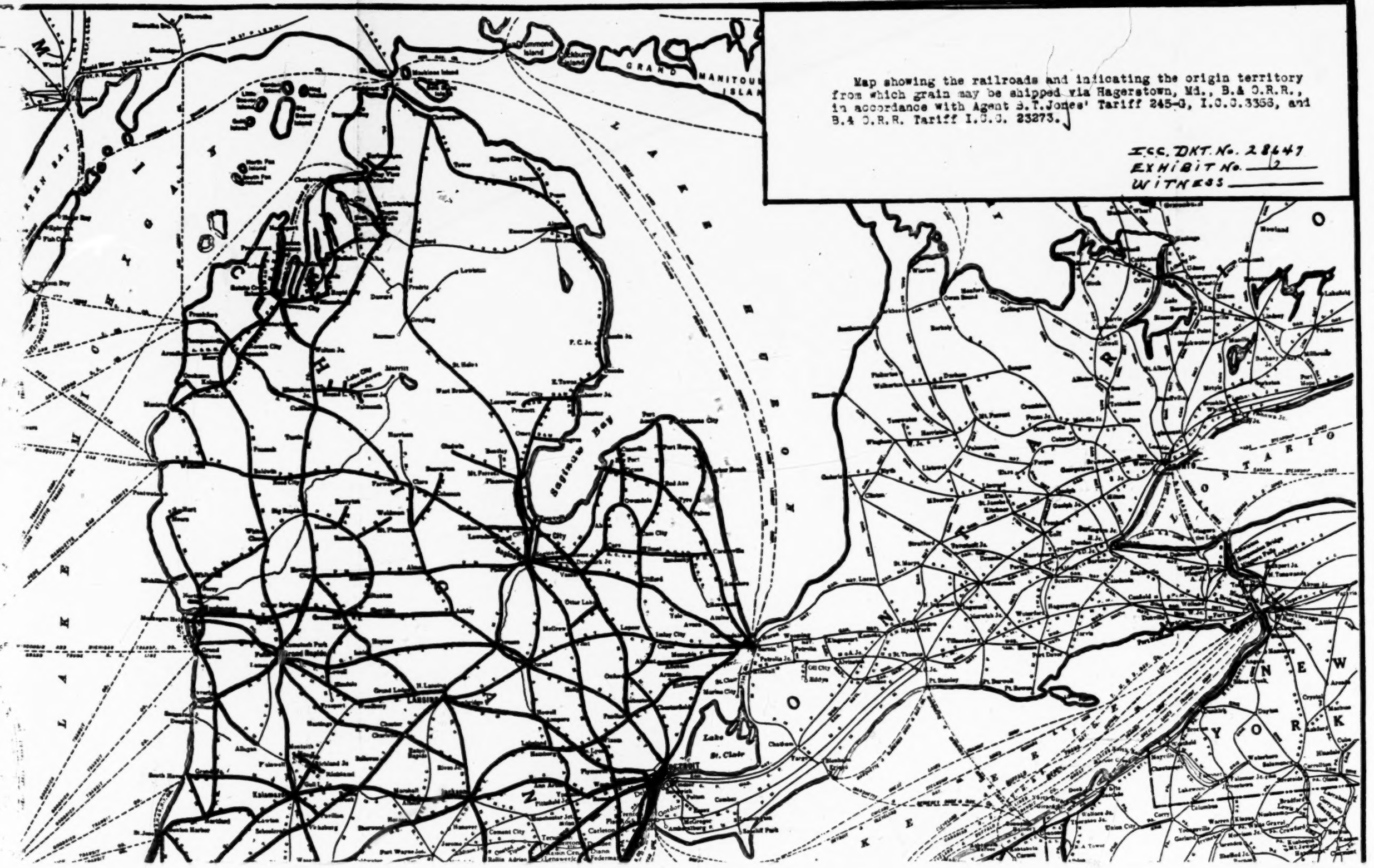
IN  
CENTRAL FREIGHT ASSOC. TERRITORY  
AND  
ADJACENT JUNCTION AND TERMINAL POINTS

EDWARD MORRIS  
Chairman Central Freight Association  
CHICAGO



Map showing the railroads and indicating the origin territory from which grain may be shipped via Hagerstown, Md., B. & O.R.R., in accordance with Agent S.T. Jones' Tariff 245-G, I.O.C. 3353, and B. & O.R.R. Tariff I.O.C. 23273.

ICC, DKT. No. 28447  
EXHIBIT No. 6  
WITNESS \_\_\_\_\_





## EXHIBIT No. 10

## STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Chicago, Ill., to New York, N. Y. via Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate From Origin to Destination Without Out-of-Route or Back-Haul Charge.

Origin Road	Destination Road	Route
B&O	CNJ	B&O Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. C.N.J.
B&O	DL&W	" " " " " " " " " " " " Phillipsburg, N. J. DL&W
B&O	L. V.	" " " " " " " " " " " " East Penn Jct., Pa. L. V.
C&O	CNJ	C&O Cincinnati, Ohio, B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. C. NJ
C&O	L. V.	" " " " " " " " " " " " East Penna. Jct., Pa. L. V.
C&O	DL&W	" " " " " " " " " " " " Allentown, Pa., CNJ, Phillipsburg, N. J. DL&W.
C&O	CNJ	C&O Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
Erie	CNJ	Erie, Youngstown, Ohio, P&LE, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
Erie	CNJ	" Creston, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WVa., Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC&StL	CNJ	NYC&StL, Fostoria, Ohio, B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC&StL	DL&W	" " " " " " " " " " " " Phillipsburg, N. J. DL&W
NYC&StL	LV	" " " " " " " " " " " " East Penn. Jct., Pa. L. V.
NYC&StL	CNJ	" Cleveland, Ohio, NYC, Youngstown, Ohio, P&LE, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ.
NYC&StL	CNJ	" Bellevue, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WVa. " " " " " " " " " " " "
NYC&StL	CNJ	" Cleveland, Ohio. " " " " " " " " " " " " " " " "
NYC (C)	CNJ	NYC (C) Indianapolis, Ind., B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
NYC (C)	DL&W	" " " " " " " " " " " " Phillipsburg, N. J. DL&W
NYC (C)	L. V.	" " " " " " " " " " " " East Penn Jct., Pa. L. V.
NYC (C)	CNJ	" Cincinnati, Ohio, C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (C)	CNJ	" " " " " " " " " " " " Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
NYC (C)	CNJ	" Ivorydale, Ohio, N&W, Hagerstown Jct. Md., WM., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (C)	CNJ	" Galion, Ohio, Erie, Youngstown, Ohio, P&LE, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (C)	CNJ	" Cleveland, Ohio, NYC, " " " " " " " " " " " "
NYC (W)	CNJ	NYC (W) N. Judson, Ind. C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (W)	CNJ	" " " " " " " " " " " " Waynesboro Union Station, Va. N. W., Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
NYC (W)	CNJ	" Youngstown, Ohio, P&LE Connellsville, Pa. W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
NYC (W)	CNJ	" Cleveland, Ohio, Erie, Youngstown, Ohio, P&LE Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
Wabash	CNJ	Wabash, Toledo, Ohio, W&LE, Pittsburgh Jct., Ohio P&WVa. Connellsville, Pa. W. Md., " " " " " " " " " "

## TARIFF AUTHORITY

B. T. Jones	Tariff 245-G I. C. C. 3356
B&O R. R.	I. C. C. A-4
B&O R. R.	" WL-10293
Erie R. R.	" A-6828
NYC&StL	" 4375
NYC RR.	" 5
NYC RR.	" 5554 (MC Series)
NYC RR.	" 2 (West OC Series)
Wabash	" 6170
DL&W	" 1
L. V. RR.	" 5

[fol. 697]

## EXHIBIT No. 11

## STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, From Chicago, Ill. to New York, N. Y. Via: Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate from Origin to Destination Plus Out-of-Route or Back-Haul Charge

Origin Road	Destination Road	Route	Origin Road	Destination Road	Route
B&O C&O C&O Erie Erie	B&O B&O PRR PRR PRR	B&O RR. C&O Ry., Cincinnati, Ohio, B&O RR. C&O Ry., Richmond, Ind. P. RR. Erie RR., Youngstown, Ohio, P. RR. Erie RR. Transfer, Pa. P. RR.	PRR PRR PRR PRR PRR	PRR B&O B&O B&O B&O	P. RR. P. RR. Bellaire, Ohio, B&O RR. P. RR. Wheeling, W. Va. B&O RR. P. RR. Zanesville, Ohio B&O RR. P. RR. Akron, Ohio, B&O RR.
NYC&StL NYC (C) NYC (M) NYC (M) NYC (W) NYC (W)	PRR PRR B&O PRR PRR PRR	NYC&StL RR., Ft. Wayne, Ind. P. RR. NYC (C) Indianapolis, Ind. P. R. R. NYC (M) Toledo, Ohio, B&O RR. NYC (M) Toledo, Ohio, PRR. NYC (W) Hamlet, Ind. P. RR. NYC (W) North Judson, Ind. P. RR.	PRR PRR PRR PRR Wabash	B&O B&O B&O B&O P. RR.	P. RR. Lima, Ohio, B&O RR. P. RR. Mansfield, Ohio, B&O RR. P. RR. Columbus, Ohio, B&O RR. P. RR. Newark, Ohio, B&O RR. Wabash Ry. Toledo, Ohio, P. RR.

## TARIFF AUTHORITY

Agent B. T. Jones—Tariff 245-G I. C. C. 3356  
 B&O R. R. I. C. C. A-4  
 B&O R. R. " WL-10293  
 Erie R. R. " A-6828  
 NYC&StL RR. " 4375  
 NYC R. R. " 5  
 NYC RR. " 5554 (M. C. Series)  
 NYC RR. " 2 (West OC Series)  
 P. RR. " 13  
 Wabash Ry. " 6170

## EXHIBIT No. 12

## STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, From Decatur, Ill. to Freehold, N. J. Via Which Transit is Available at Hagerstown, Md., on Basis of Joint Through Rate from Origin to Destination Without Out-of-Route or Back-Haul Charge.

Origin Road	Destination Road	Route
B&O B&O B&O B&O B&O	CNJ CNJ CNJ CNJ CNJ	B&O (Via Hamilton, Ohio) Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ " Cincinnati, Ohio, C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., " " " " " Waynesboro Union Station, Va., N&W, Hagerstown Jet., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " Cottage Grove, Ind., C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " " " " Waynesboro Union Station, Va., N&W, Hagerstown Jet., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IC IC	CNJ CNJ	IC Chicago, Ill., B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " Indianapolis, Ind., B&O, " " " " " " " " " "
IC IC	CNJ CNJ	" Chicago, Ill., C&O, Durbin, W. Va. " " " " " " " " " " " " " Waynesboro Union Station, Va., N&W, Hagerstown, Jet., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " " Ivorydale, Ohio. " " " " " " " " " " " " NYC Youngstown, Ohio, P&LE, Connellsville, Pa. W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ " " " Erie " " " " " " " " " " " " " Creston, Ohio, W&LE, Pittsburgh Jet., Ohio, P&WVa., Connellsville, Pa., W.Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ " " " " " " " " " " " " " Bound Brook, N. J. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " NYC&StL Cleveland, Ohio, " " " " " " " " " " Allentown, Pa. " " " " " " " " " " " " " " Bound Brook, N. J. " " " " " Bellevue, " Allentown, Pa. " " " " " Fremont, " " " " " " " " " " " " "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " " " " " " " " " " " " Bound Brook, N. J. " " " " Wabash Toldeo " Allentown, Pa. " " Champaign, Ill. " Bound Brook, N. J. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" Gibson City, Ill. " Allentown, Pa. " " Tolona, Ill. " Bound Brook, N. J. " " " " " " " " " " " " " " Allentown, Pa. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" " " " " " " " " " " " " " " " " " Indianapolis,Ind.,NYC&StL Cleveland,Ohio,W&LE, " Allentown, Pa. " " " " " Bellevue, " Bound Brook, N. J. "
IC IC IC IC IC	CNJ CNJ CNJ CNJ CNJ	" Fremont, " " " " " " " " " " " " " " Peoria, Ill. "
IC IC IC	CNJ CNJ CNJ	" "
IC IC IC	CNJ CNJ CNJ	" "



Origin Road	Destination Road	Route
IT	CNJ	IT, Springfield, Ill., B&O, Cherry Run, W. Va., W. Md. Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, Ill., CRI&P Chicago, Ill., B&O, Cherry Run, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, Ill. NYC(C) Cincinnati, Ohio, B&O, Cherry Run, W. Va., W. Md., " " " " " "
IT	CNJ	IT Bloomington, Ill. " " " " " " " " " " " "
IT	CNJ	IT Hillery, Ill. " " " " " " " " " " " "
IT	CNJ	IT Mackinaw, Ill. " " " " " " " " " " " "
IT	CNJ	IT Peoria, Ill., NYC&StL Fostoria, Ohio, " " " " " " " " " " " "
IT	CNJ	IT Bloomington, Ill. " " " " " " " " " " " "
IT	CNJ	IT Bloomington, Ill. " " " C&O Durbin, W. Va. " " " " " " " " " "
IT	CNJ	IT Peoria, " " " " " " " " " " " "
IT	CNJ	IT Bloomington, " " Muncie, Ind. " " " " " " " " " " " "
IT	CNJ	IT Peoria, " " " " " " " " " " " "
IT	CNJ	IT " " CRI&P, Chicago, Ill. " " " " " " " " " " " "
IT	CNJ	IT Bloomington, " NYC (C), Cincinnati, Ohio, " " " " " " " " " " " "
IT	CNJ	IT Hillery, " NYC (C) " " " " " " " " " " " "
IT	CNJ	IT Mackinaw, " " " " " " " " " " " " " " " "
IT	CNJ	IT Peoria, " " " " " " " " " " " " " " " "
IT	CNJ	IT " " CRI&P Chicago, Ill, C&O Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa. Reading, Allentown, Pa. CNJ
IT	CNJ	IT Bloomington, Ill., NYC (C) Cincinnati, Ohio, C&O Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IT	CNJ	IT Hillery, " NYC (C) Cincinnati, Ohio, C&O, Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
IT	CNJ	IT Mackinaw, " NYC (C) Cincinnati, Ohio, C&O, Waynesboro, Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, " NYC (C) Cincinnati, Ohio, C&O, Waynesboro Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ
IT	CNJ	IT Peoria, Ill., NYC&StL, Cleveland, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WVa., Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa. CNJ.
IT	CNJ	IT " " " Bellevue, " " " " " " " " " " " "
IT	CNJ	IT " " " Fremont, " " " " " " " " " " " "
PRR.	CNJ	PRR Indianapolis, Ind., NYC(C) Cincinnati, Ohio, C&O, Durbin, W. Va., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ.
PRR.	CNJ	" " " " " " " " " " " " " " " "
PRR.	PRR.	Waynesboro, Union Station, Va., N&W, Hagerstown Jct., Md., W. Md., Shippensburg, Pa., (Reading, Allentown, Pa. CNJ
Wab.	CNJ	Direct.
Wab.	CNJ	Wab. Toledo, Ohio, W&LE, Pittsburgh Jct., Ohio, P&WV, Connellsville, Pa., W. Md., Shippensburg, Pa., Reading, Allentown, Pa., CNJ
		" " " " " " " " " " " " " " " "

## TARIFF AUTHORITY

Agent B. T. Jones 245-G I. C. C. 3356

B&amp;O R. R.

I. C. C. A-4

B&amp;O R. R.

I. C. C. WL-10293

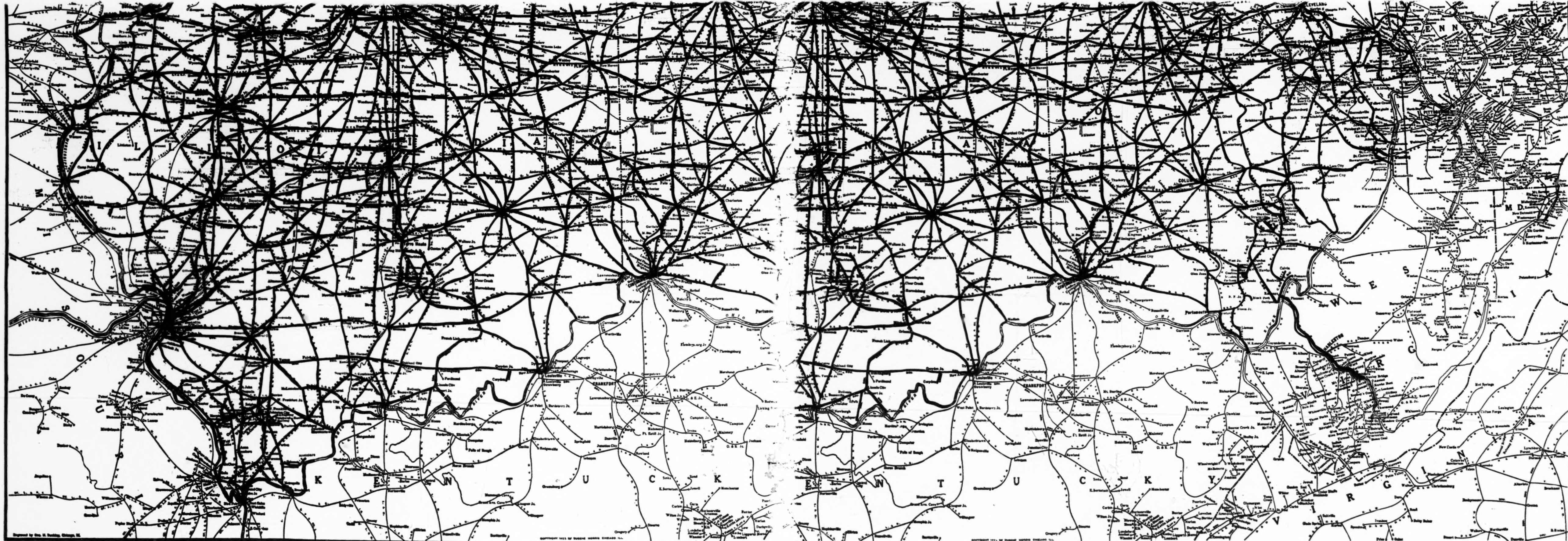
P. R. R.

I. C. C. 13

Wabash Ry.

I. C. C. 6170.







[fol. 700]

## EXHIBIT No. 13

## STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Decatur, Ill., to Freehold, N. J. Via: Which Transit is Available at Hagerstown, Md., on Basis of Joint Through Rate From Origin to Destination Plus Out of Route or Back-Haul Charge.

Origin Road	Destination Road	Route	Origin Road	Destination Road	Route
B&O	PRR	B&O Akron, Ohio, P. R. R.	B&O	PRR	B&O Newark, Ohio, P. R. R.
B&O	PRR	" Bellaire, Ohio, P. R. R.	B&O	PRR	" Tiffin, Ohio, P. R. R.
B&O	PRR	" Wheeling, W. Va. P. R. R.	B&O	PRR	" Toledo, Ohio, P. R. R.
B&O	PRR	" Cincinnati, Ohio, P. R. R.	B&O	PRR	" Washington C. H. Ohio, P. R. R.
B&O	PRR	" Columbus, Ohio, P. R. R.	B&O	PRR	" Dayton, Ohio, P. R. R.
B&O	PRR	" Hamilton, Ohio, P. R. R.	I. C.	PRR	I. C. Chicago, Ill. P. R. R.
B&O	PRR	" Indianapolis, Ind. P. R. R.	Wabash	P. RR.	Wab. Logansport, Ind. P. R. R.
B&O	PRR	" Mansfield, Ohio, P. R. R.	Wabash	P. RR.	" Toledo, Ohio, P. R. R.

## TARIFF AUTHORITY

Agent B. T. Jones Tariff 245-G I. C. C. 3356

B&O R.R. I. C. C. A-4

B&O R. R. I. C. C. WL 10293

Wabash Ry. I. C. C. 6170.



EXHIBIT No. 7

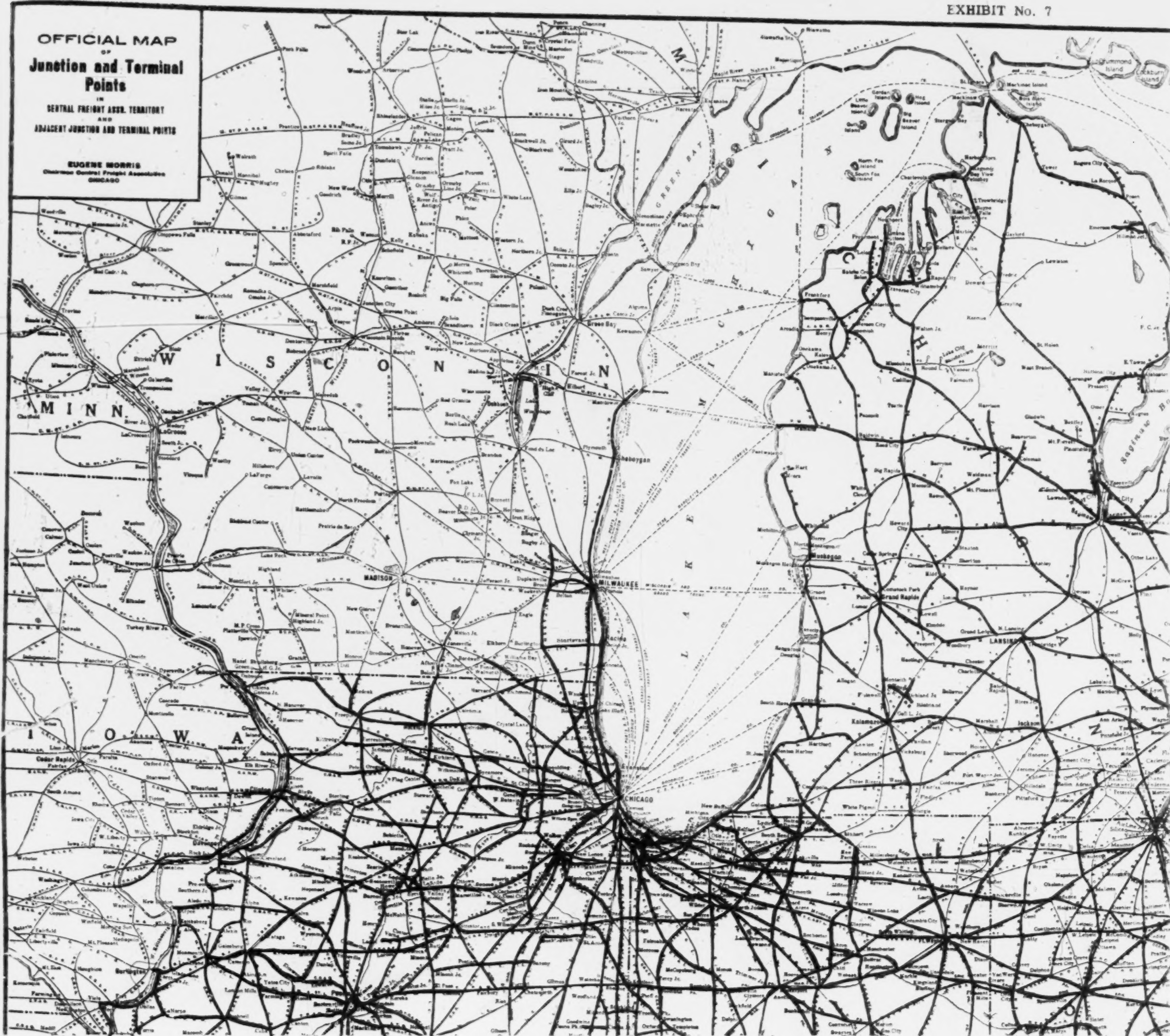


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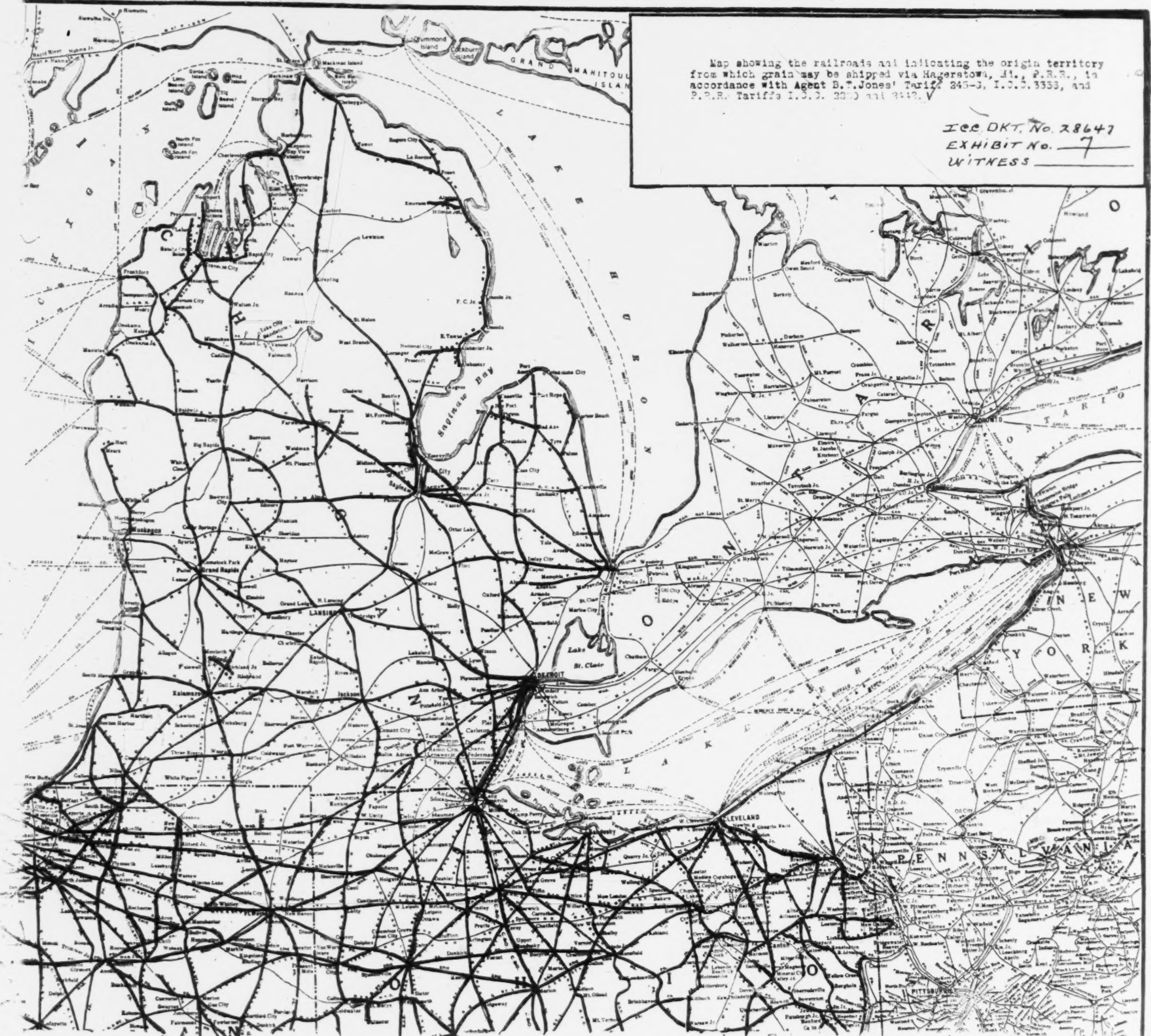




EXHIBIT No. 8

**OFFICIAL MAP**  
**of**  
**Junction and Terminal**  
**Points**  
**in**  
**CENTRAL FREIGHT ASSN. TERRITORY**  
**AND**  
**ADJACENT JUNCTION AND TERMINAL POINTS**  
  
**EUGENE MORRIS**  
Chairman Central Freight Association  
CHICAGO

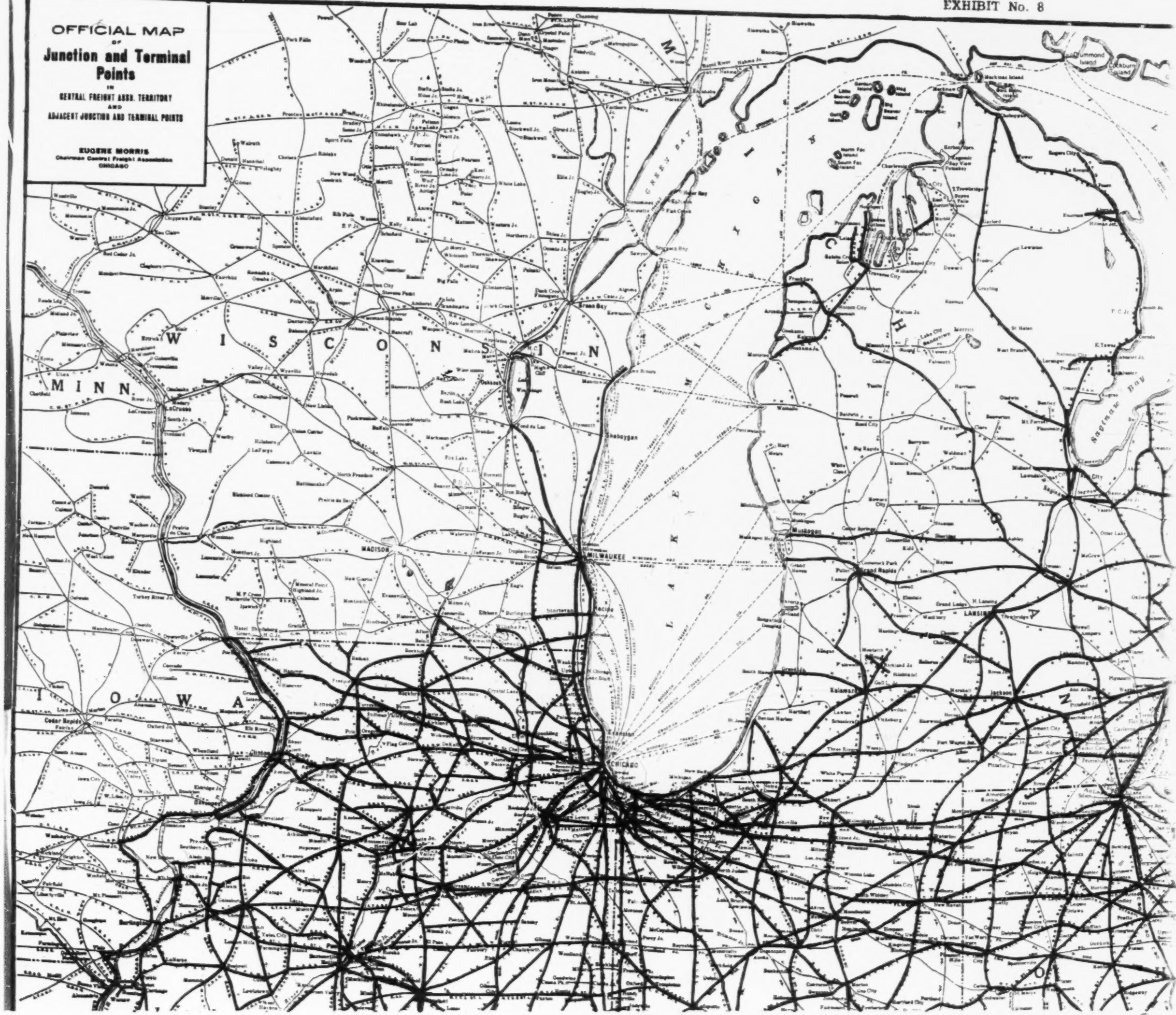
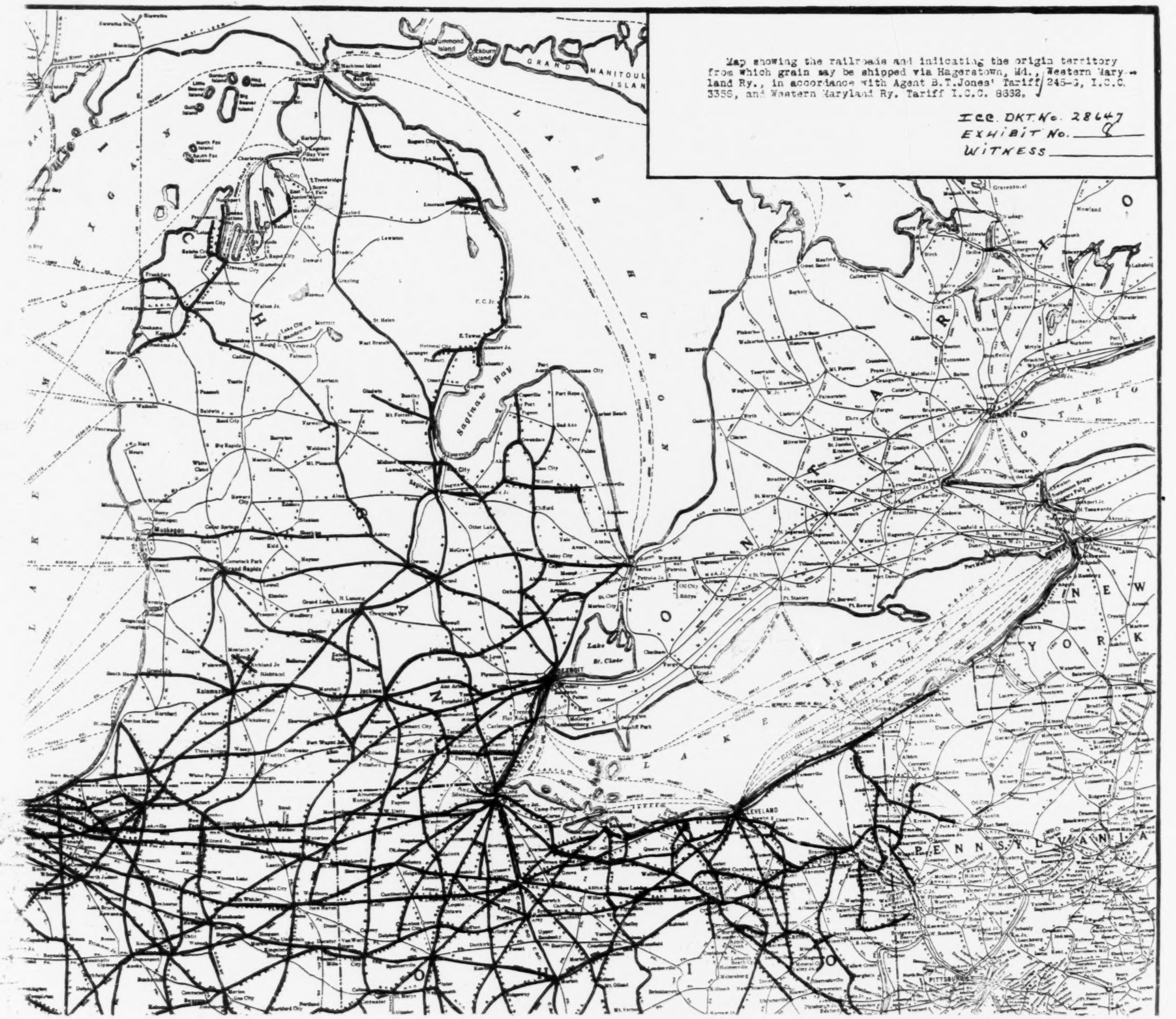


EXHIBIT No. 8

Map showing the railroads and indicating the origin territory from which grain may be shipped via Hagerstown, Md., Western Maryland Ry., in accordance with Agent S.T. Jones' Tariff 245-3, I.C.C. 3355, and Western Maryland Ry. Tariff I.C.C. 8332.

ICC DKT. No. 28647  
EXHIBIT No. 8  
WITNESS





Barrys Bay

Wallace

York River

Beaconer

Beaconer Jc.

Ormsby Jc.

Coe Hill

Bannockburn

Cordova

Madoc

Marmora

Bonarlaw

Anson

Trenton Jc.

Belleville

Pictou

Cobourg

Ontario

Canada

Stearns

Cape Vincent

Watertown

Carthage

Croghan

Lowville

Glenfield

Carter

Thomson

McKewen

Remsen

Salisbury Center

North Creek

Warren

Thurman

Glen Falls

Schuyler

Saratoga Springs

Broadalbin

Mechanicville

Ballston Spa

Amsterdam

Rotterdam Jc.

Schenectady

Delanson

Schoharie Jc.

Schoharie

Voorheesville

Silverside

Ravena

Kanterskill

Kanterskill Jc.

Arkville

Hunter

Delhi

Oneonta

New Berlin

Coopersville

Edmeston

Richfield Jc.

Richfield Sprs.

Cherry Valley

Fulton

Canastota

Woodard

Clinton

Oneida

Rome

Camden

Williamstown

Pulaski

Richland

Lacina

Watertown

Carthage

Croghan

Lowville

Glenfield

Carter

Thomson

McKewen

Remsen

Salisbury Center

North Creek

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Schoharie

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Schenectady

Delanson

Schoharie Jc.

Schoharie

Voorheesville

Silverside

Ravena

Kanterskill

Kanterskill Jc.

Arkville

Hunter

Delhi

Oneonta

New Berlin

Coopersville

Edmeston

Richfield Jc.

Richfield

[illegible][illegible][illegible]



## EXHIBIT No. 9

Map Showing Trunk Line Destination Territory to Which Transit is Available at Hagerstown, Md. per W.M.Ry. 100 8662 Without Out of Route or Back Haul Charge on Grain and Grain Products Originating in Central Freight Association and Western Trunk Line Territories. (Routes per B & O R.R. 100 A-4.)

## LEGEND:

----- Indicates Available Destination Territory.



[fol. 700]

EXHIBIT No. 13  
STATEMENT

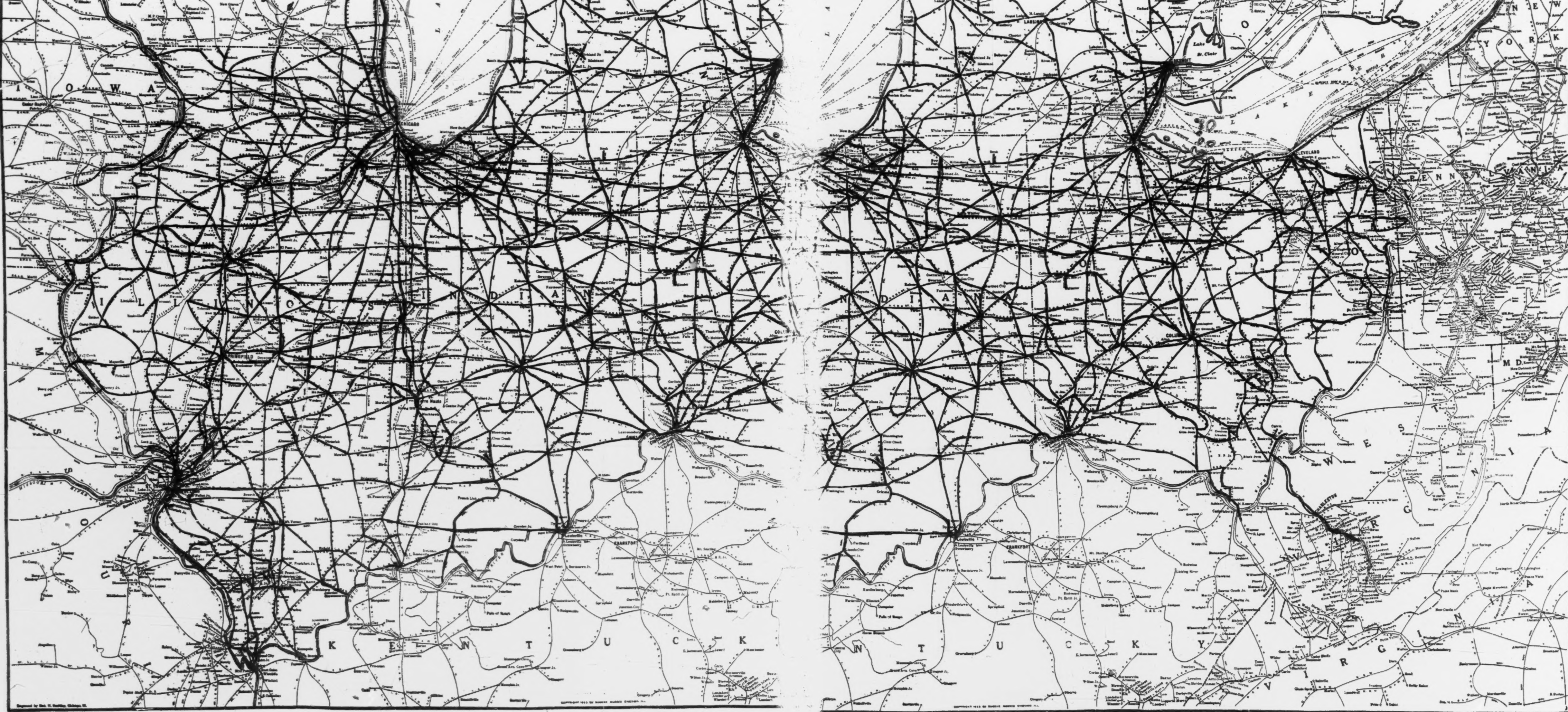
Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Decatur, Ill., to Freehold, N. J. Via: Which Transit is Available at Hagerstown, Md., on Basis of Joint Through Rate From Origin to Destination Plus Out of Route or Back-Haul Charge.

Origin Road	Destination Road	Route	Origin Road	Destination Road	Route
B&O	PRR	B&O Akron, Ohio, P. R. R.	B&O	PRR	B&O Newark, Ohio, P. R. R.
B&O	PRR	" Bellaire, Ohio, P. R. R.	B&O	PRR	" Tiffin, Ohio, P. R. R.
B&O	PRR	" Wheeling, W. Va. P. R. R.	B&O	PRR	" Toledo, Ohio, P. R. R.
B&O	PRR	" Cincinnati, Ohio, P. R. R.	B&O	PRR	" Washington C. H. Ohio, P. R. R.
B&O	PRR	" Columbus, Ohio, P. R. R.	B&O	PRR	" Dayton, Ohio, P. R. R.
B&O	PRR	" Hamilton, Ohio, P. R. R.	I. C.	PRR	I. C. Chicago, Ill. P. R. R.
B&O	PRR	" Indianapolis, Ind. P. R. R.	Wabash	P. RR.	Wab. Logansport, Ind. P. R. R.
B&O	PRR	" Mansfield, Ohio, P. R. R.	Wabash	P. RR.	" Toledo, Ohio, P. R. R.

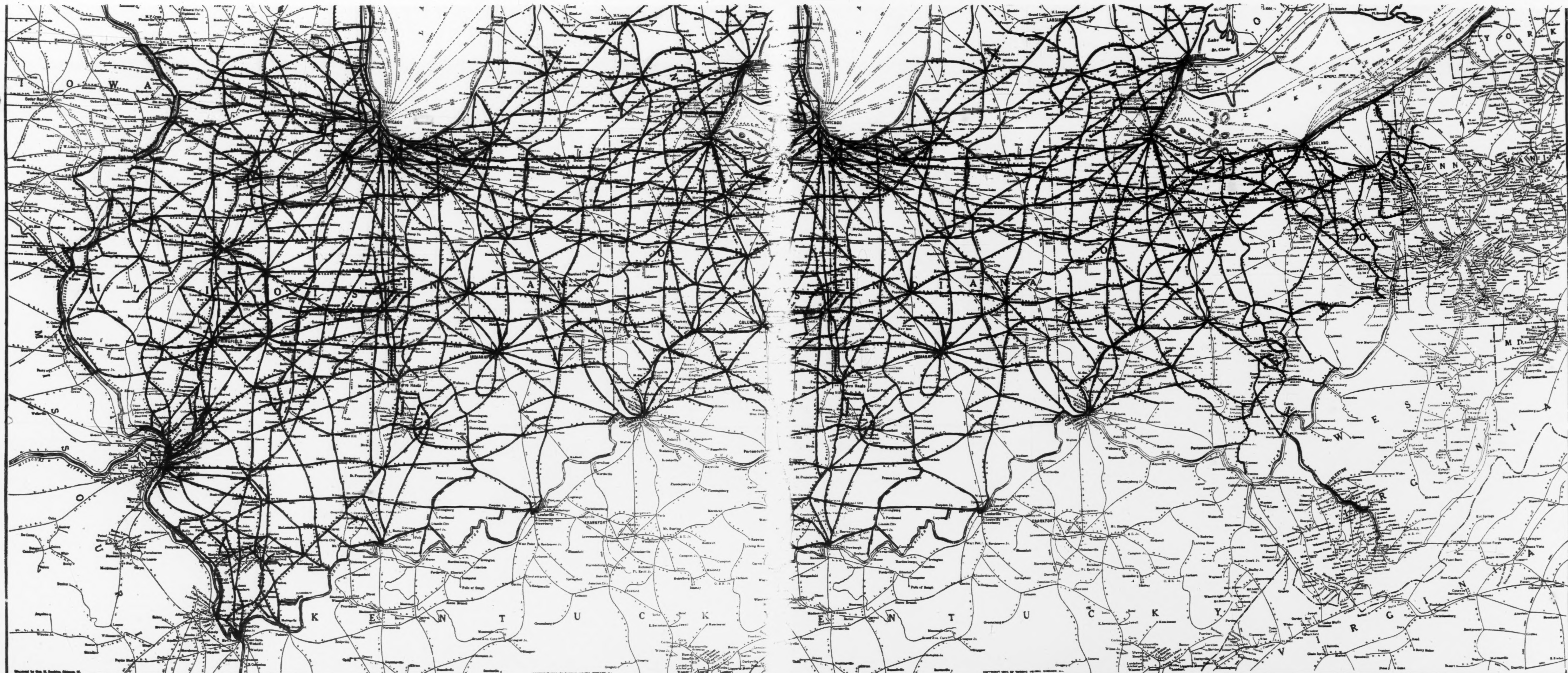
## TARIFF AUTHORITY

Agent B. T. Jones Tariff 245-G I. C. C. 3356  
 B&O R.R. I. C. C. A-4  
 B&O R. R. I. C. C. WL 10293  
 Wabash Ry. I. C. C. 6170.

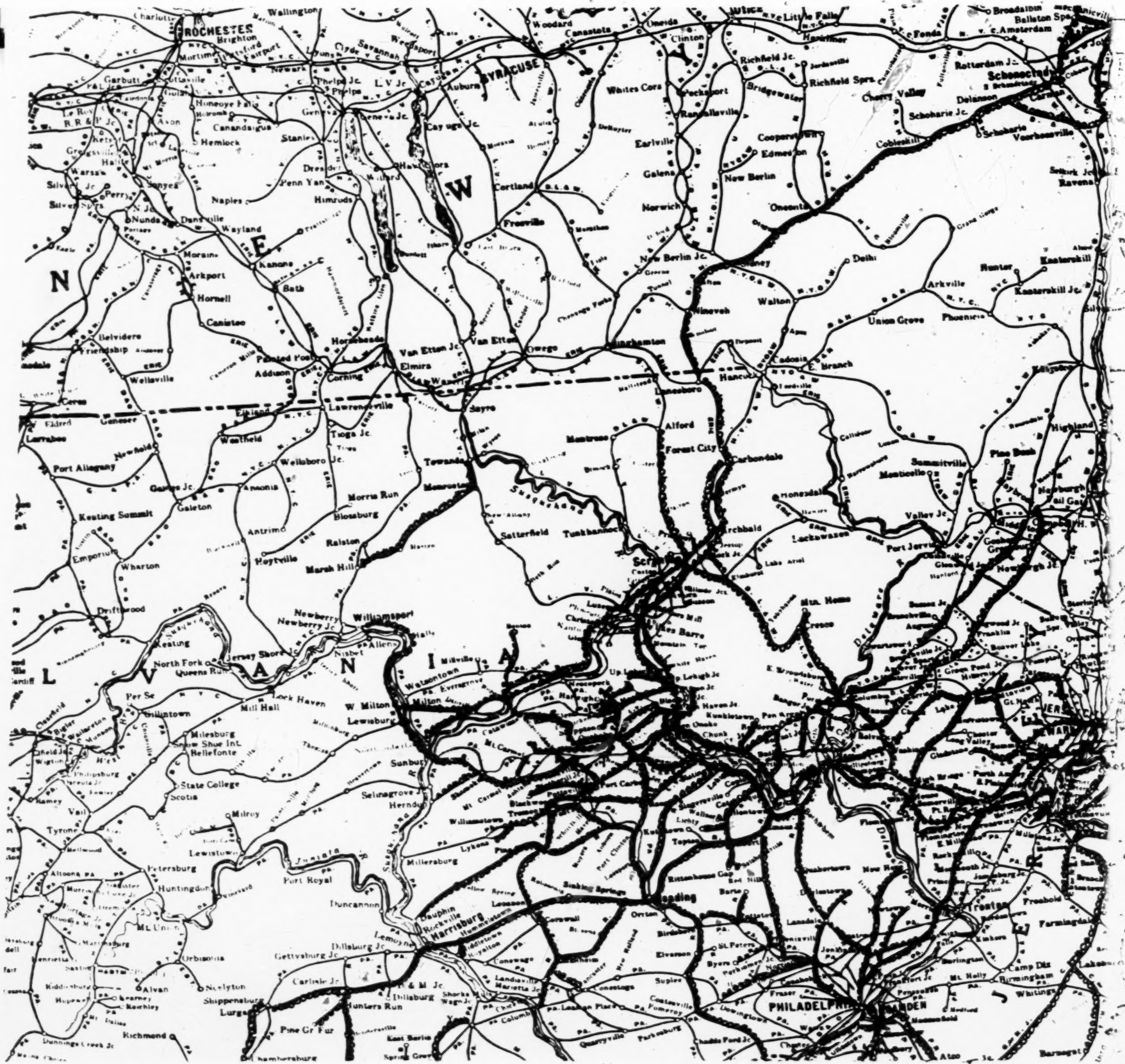




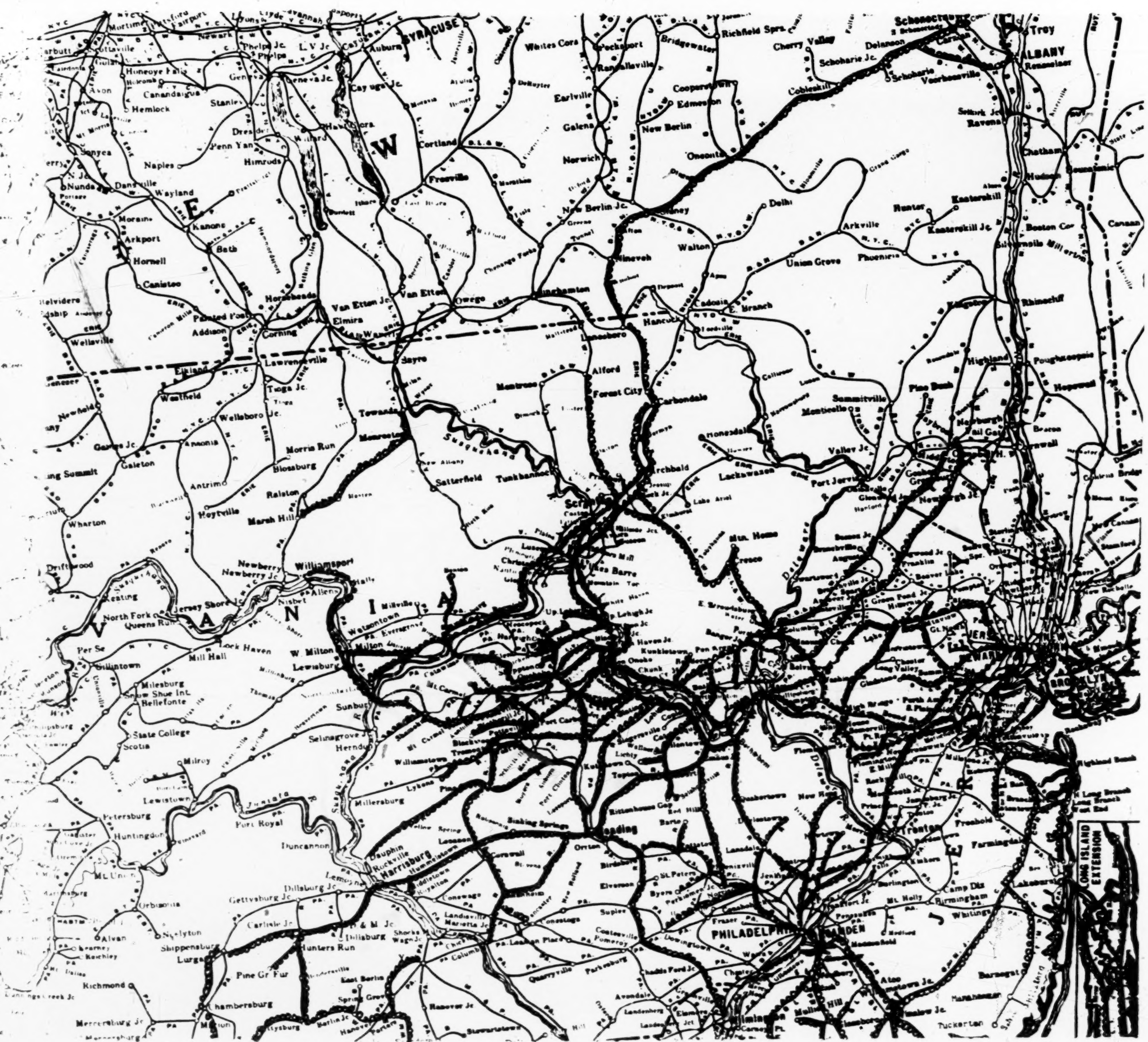














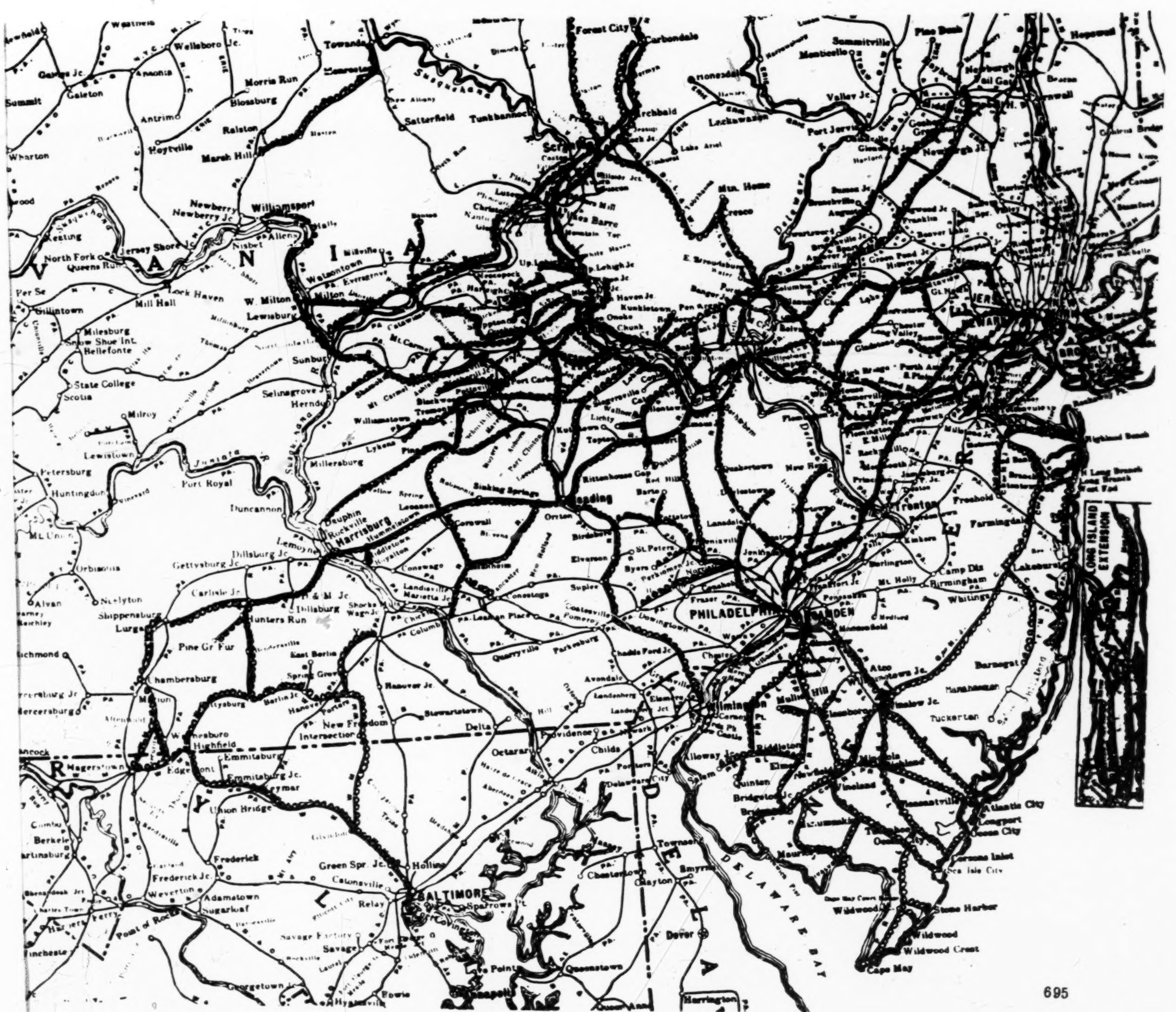




EXHIBIT No. 14  
STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Peoria, Ill., to Salisbury, Md. via Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate from Origin to Destination Plus Out of Route or Back Haul Charge.

Origin Road	Destination Road	Routes						Origin Road	Destination Road	Routes					
Alton	P. RR.	Alton	Springfield,	Ill.	B&O	Akron, Bellaire, Wheeling, Cincinnati, Columbus,	Ohio P. R. R. Ohio W. Va. Ohio	CI&M	P. RR.	CI&M	Taylorville,	Ill.	B&O	Bellaire, Wheeling, Cincinnati, Columbus Hamilton	
Alton,	P. RR.	Alton	Springfield,	Ill.	B&O	Decatur, Hamilton, Indianapolis, Mansfield, Newark,	Ill. Ohio Ind. Ohio	CI&M	P. RR.	CI&M	Taylorville,	Ill.	B&O	Indianapo: Mansfield. Newark, Seymour, Tiffin,	
Alton,	P. RR.	Alton	Springfield,	Ill.	B&O	Seymour, Tiffin, Toledo, Vincennes, Washington CH, Toledo, N. Y. P. R. R.	Ind. Ohio Ohio Ind. O. Ohio PM-E. Buffalo,	CI&M	P. RR.	CI&M	Taylorville,	Ill.	B&O	Toledo, Vincennes Washington Akron, Avilla, Bellaire, Wheeling,	
CI&M	P. RR.	CI&M	Springfield,	Ill.	B&O	Akron, Bellaire, Wheeling, Cincinnati, Columbus,	Ohio P. RR. Ohio W. Va. Ohio	C&NW	"	C&NW	Chicago,	Ill.	B&O	Cincinnati Mansfield Newark, New Cast Tiffin,	
CI&M	P. RR.	CI&M	Springfield,	Ill.	B&O	Decatur, Hamilton, Indianapolis, Mansfield, Newark,	Ill. Ohio Ind. Ohio	C&NW	P. RR.	C&NW	Chicago,	Ill.	B&O	Toledo,	
								CB&Q		CB&Q	Chicago,	Ill.	PRR	Akron, Avilla, Bellaire,	
CI&M	P. RR.	CI&M	Springfield,	Ill.	B&O	Seymour, Tiffin, Toledo, Vincennes, Washington CH,	Ind. Ohio Ohio Ind. O.	CB&Q	P. RR.	CB&Q	Chicago,	Ill.	B&O	Wheeling Cincinnati Mansfield Newark, New Cast	
CI&M	P. RR.	CI&M	Springfield,	Ill.	Wabash	Logansport, Ft. Wayne, Logansport, Ft. Wayne, Akron,	Ind. " " " " " " " " Ohio	CB&Q	P. RR.	CB&Q	Chicago,	Ill.	B&O	Tiffin, Toledo,	
			Taylorville,	Ill.				CRI&P		CRI&P	Chicago,		PRR	Akron, Avilla, Bellaire,	
													B&O		

EXHIBIT No. 14  
STATEMENT

Showing Detail of Presently Effective Typical Routes on Grain, in Carloads, from Peoria, Ill., to Salisbury, Md. via Which Transit is Available at Hagerstown, Md. on Basis of Joint Through Rate from Origin to Destination Plus Out of Route or Back Haul Charge.

Destination Road	Routes							Origin Road	Destination Road	Routes						
P. R.R.	Alton	Springfield,	Ill.	B&O	Akron, Belleaire,	Ohio	P. R. R.	CI&M	P. RR	CI&M	Taylorville,	Ill.	B&O	Bellaire, Wheeling, Cincinnati,	Ohio	P. R. R.
"	"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	Columbus,	Ohio	"
"	"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	Hamilton,	Ohio	"
"	"	"	"	"	Columbus,	Ohio	"	"	"	"	"	"	"			"
P. R.R.	Alton	Springfield,	Ill.	B&O	Decatur, Hamilton,	Ill.	"	CI&M	P. RR.	CI&M	Taylorville,	Ill.	B&O	Indianapolis, Mansfield,	Ind.	P. R. R.
"	"	"	"	"	Indianapolis,	Ind.	"	"	"	"	"	"	"	Newark,	Ohio	"
"	"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	Seymour,	Ind.	"
"	"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	Tiffin,	Ohio	"
P. R.R.	Alton	Springfield,	Ill.	B&O	Seymour,	Ind.	"	CI&M	P. RR.	CI&M	Taylorville,	Ill.	B&O	Toledo,	Ohio	P. R. R.
"	"	"	"	"	Tiffin,	Ohio	"	"	"	"	"	"	"	Vincennes,	Ind.	"
"	"	"	"	"	Toledo,	Ohio	"	"	"	"	"	"	"	Washington CH,	O.	"
"	"	"	"	"	Vincennes,	Ind.	"	C&NW	"	C&NW	Chicago,	Ill.	"	Akron,	Ohio	"
"	"	"	"	"	Washington CH,	O.	"	"	"	"	"	"	"	Avilla,	Ind.	"
"	"	"	"	"	Toledo,	Ohio	PM-E. Buffalo,	"	"	"	"	"	"	Bellaire,	Ohio	"
"	"	"	"	"	N. Y. P. R. R.			"	"	"	"	"	"	Wheeling,	W. Va.	"
P. R.R.	CI&M	Springfield,	Ill.	B&O	Akron, Belleaire,	Ohio	P. R.R.	C&NW	"	C&NW	Chicago,	Ill.	B&O	Cincinnati,	Ohio	P. R. R.
"	"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	Mansfield,	"	"
"	"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	Newark,	Pa.	"
"	"	"	"	"	Columbus,	Ohio	"	"	"	"	"	"	"	New Castle,	Ohio	"
"	"	"	"	"				"	"	"	"	"	"	Tiffin,		"
P. R.R.	CI&M	Springfield,	Ill.	B&O	Decatur, Hamilton,	Ill.	P. R. R.	C&NW	P. RR.	C&NW	Chicago,	Ill.	B&O	Toledo,	Ohio,	P. R. R.
"	"	"	"	"	Indianapolis,	Ind.	"	"	"	"	"	"	"			"
"	"	"	"	"	Mansfield,	Ohio	"	CB&Q	"	CB&Q	Chicago,	Ill.	B&O	Akron,	Ohio	P. R. R.
"	"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	Avilla,	Ind.	"
"	"	"	"	"				"	"	"	"	"	"	Bellaire,	Ohio	"
P. R.R.	CI&M	Springfield,	Ill.	B&O	Seymour,	Ind.	P. R. R.	CB&Q	P. RR.	CB&Q	Chicago,	Ill.	B&O	Wheeling,	W. Va.	P. R. R.
"	"	"	"	"	Tiffin,	Ohio	"	"	"	"	"	"	"	Cincinnati,	Ohio	"
"	"	"	"	"	Toledo,	"	"	"	"	"	"	"	"	Mansfield,	Ohio	"
"	"	"	"	"	Vincennes,	Ind.	"	"	"	"	"	"	"	Newark,	Ohio	"
"	"	"	"	"	Washington CH,	O.	"	"	"	"	"	"	"	New Castle,	Pa.	"
P. R.R.	CI&M	Springfield,	Ill.	Wabash	Logansport,	Ind.	P. R. R.	CB&Q	P. RR.	CB&Q	Chicago,	Ill.	B&O	Tiffin,	Ohio	P. R. R.
"	"	"	"	"	Ft. Wayne,	"	"	"	"	"	"	"	"	Toledo,	Ohio	"
"	"	Taylorville,	Ill.	"	Logansport,	"	"	"	"	"	"	"	"			"
"	"	"	"	"	Ft. Wayne,	Ohio	"	CRI&P	"	CRI&P	Chicago,	"	PRR	Akron,	Ohio	"
"	"	"	"	"	Akron,		"	"	"	"	"	"	B&O	Avilla,	Ind.	"
"	"	"	"	"			"	"	"	"	"	"	B&O	Bellaire,	Ohio	"

Origin Road	Destination Road	Routes						Origin Road	Destination Road	Routes					
CRI&P	P. RR.	CRI&P	Chicago,	Ill.	B&O	Wheeling,	W. Va.	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Indianapolis,
"	"	"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	Mansfield,
"	"	"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	Newark,
"	"	"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	Seymour,
"	"	"	"	"	"	New Castle,	Pa.	"	"	"	"	"	"	"	Tiffin,
CRI&P	P. RR.	CRI&P	Chicago,	Ill.	B&O	Tiffin,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Toledo,
"	"	"	"	"	"	Toledo,	Ohio	"	"	"	"	"	"	"	Vincennes,
I. C.	"	I. C.	"	"	"	Akron,	Ohio	"	"	"	"	"	"	"	Washington CH
"	"	"	"	"	"	Avilla,	Ind.	"	"	"	"	Decatur,	"	"	Akron,
"	"	"	"	"	"	Bellaire,	Ohio	"	"	"	"	"	"	"	Bellaire,
I. C.	P. RR.	I. C.	Chicago,	Ill.	B&O	Wheeling,	W. Va.	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Wheeling,
"	"	"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	Cincinnati,
"	"	"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	Columbus,
"	"	"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	Hamilton,
"	"	"	"	"	"	New Castle,	Pa.	"	"	"	"	"	"	"	Indianapolis,
I. C.	P. RR.	I. C.	Chicago,	Ill.	B&O	Tiffin,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Mansfield,
"	"	"	"	"	"	Toledo,	Ohio	"	"	"	"	"	"	"	Newark,
"	"	"	Indianapolis,	Ind.	"	Akron,	Ohio	"	"	"	"	"	"	"	Tiffin,
"	"	"	"	"	"	Bellaire,	Ohio	"	"	"	"	"	"	"	Toledo,
"	"	"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	Washington CH
I. C.	P. RR.	I. C.	Indianapolis,	Ind.	B&O	Cincinnati,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Peoria,	Ill.	CRI&P	Chicago,
"	"	"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	Ill.
"	"	"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	"
"	"	"	"	"	"	New Castle,	Pa.	"	"	"	"	"	"	"	"
"	"	"	"	"	"	Tiffin,	Ohio	"	"	"	"	"	"	"	"
I. C.	P. RR.	I. C.	Indianapolis,	Ind.	B&O	Toledo,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Peoria,	Ill.,	CRI&P	Chicago,
"	"	"	Chicago,	Ill.	P. RR.	"	"	"	"	"	"	"	"	"	Ill.,
"	"	"	Decatur,	"	P. RR.	"	"	"	"	"	"	"	"	"	"
"	"	"	Indianapolis,	Ind.	P. RR.	"	"	"	"	"	"	"	"	"	"
I. T.	"	I. T.	Springfield,	Ill.	B&O	Akron,	Ohio,	P. R. R.	"	"	"	"	"	"	"
I. T.	P. RR.	I. T.	Springfield,	Ill.	B&O	Bellaire,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Bloomington	Ill.	NYC(C),	Cincinnati,
"	"	"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	O. P.
"	"	"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	"
"	"	"	"	"	"	Columbus,	Ohio	"	"	"	"	"	"	"	"
"	"	"	"	"	"	Hamilton,	Ohio	"	"	"	"	"	"	"	"

Routes							Origin Road	Destination Road	Routes						
RI&P	Chicago,	Ill.	B&O	Wheeling,	W. Va.	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Indianapolis,	Ind.	P. R. R.
"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	Mansfield,	Ohio	"
"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	Newark,	Ohio	"
"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	Seymour,	Ind.	"
"	"	"	"	New Castle,	Pa.	"	"	"	"	"	"	"	Tiffin,	Ohio	"
RI&P	Chicago,	Ill.	B&O	Tiffin,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Springfield,	Ill.	B&O	Toledo,	Ohio	P. R. R.
"	"	"	"	Toledo,	Ohio	"	"	"	"	"	"	"	Vincennes,	Ind.	"
C.	"	"	"	Akron,	Ohio	"	"	"	"	"	"	"	Washington CH,	Ohio	"
"	"	"	"	Avilla,	Ind.	"	"	"	"	Decatur,	"	"	Akron,	Ohio	"
"	"	"	"	Bellaire,	Ohio	"	"	"	"	"	"	"	Bellaire,	Ohio	"
C.	Chicago,	Ill.	B&O	Wheeling,	W. Va.	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Wheeling,	W. Va.	P. R. R.
"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	Cincinnati,	Ohio	"
"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	Columbus,	Ohio	"
"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	Hamilton,	Ohio	"
"	"	"	"	New Castle,	Pa.	"	"	"	"	"	"	"	Indianapolis,	Ind.	"
C.	Chicago,	Ill.	B&O	Tiffin,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Decatur,	Ill.	B&O	Mansfield,	Ohio	P. R. R.
"	"	"	"	Toledo,	Ohio	"	"	"	"	"	"	"	Newark,	Ohio	"
"	Indianapolis, Ind.	"	"	Akron,	Ohio	"	"	"	"	"	"	"	Tiffin,	Ohio	"
"	"	"	"	Bellaire,	Ohio	"	"	"	"	"	"	"	Toledo,	Ohio	"
"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	Washington CH,	Ohio	"
C.	Indianapolis, Ind.	B&O	Cincinnati,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Peoria,	Ill.	CRI&P	Chicago, Ill.	B&O	Akron,	Ohio, PRR
"	"	"	"	Mansfield,	Ohio	"	"	"	"	"	"	"	"	Avilla,	Ind. "
"	"	"	"	Newark,	Ohio	"	"	"	"	"	"	"	"	Bellaire,	Ohio "
"	"	"	"	New Castle,	Pa.	"	"	"	"	"	"	"	"	Wheeling,	W. Va. "
"	"	"	"	Tiffin,	Ohio	"	"	"	"	"	"	"	"	Cincinnati,	Ohio "
C.	Indianapolis, Ind.	B&O	Toledo,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Peoria,	Ill., CRI&P	Chicago, Ill., B&O	Mansfield,	Ohio	PRR	
"	Chicago, Ill.	P. RR.	"	"	"	"	"	"	"	"	"	Newark,	Ohio	PRR	
"	Decatur,	P. RR.	"	"	"	"	"	"	"	"	"	New Castle,	Pa.	"	
"	Indianapolis, Ind.	P. RR.	"	"	"	"	"	"	"	"	"	Tiffin,	Ohio	"	
T.	Springfield, Ill.	B&O	Akron,	Ohio,	P. R. R.	"	"	"	"	"	"	Toledo,	Ohio	"	
T.	Springfield,	Ill.	B&O	Bellaire,	Ohio	P. R. R.	I. T.	P. R. R.	I. T.	Bloomington	Ill.	NYC(C), Cincinnati,	O. B&O	Akron,	O. PRR
"	"	"	"	Wheeling,	W. Va.	"	"	"	"	"	"	"	"	Bellaire,	O. "
"	"	"	"	Cincinnati,	Ohio	"	"	"	"	"	"	"	"	Wheeling,	W. Va. "
"	"	"	"	Columbus,	Ohio	"	"	"	"	"	"	"	"	Columbus,	O. "
"	"	"	"	Hamilton,	Ohio	"	"	"	"	"	"	"	"	Mansfield,	O. "



Origin Road	Destination Road	Routes							
I. T.	P. R. R.	I. T.	Bloomington, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Newark, Ohio	P. R. R.	
"	"	"	"	"	"	"	Tiffin, Ohio	"	
"	"	"	"	"	Cleveland, "	"	Akron, Ohio	"	
					"	"	New Castle, Pa.	"	
I. T.	P. R. R.	I. T.	Hillery, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Akron, Ohio	P. R. R.	
"	"	"	"	"	"	"	Bellaire, Ohio	"	
"	"	"	"	"	"	"	Wheeling, W. Va.	"	
"	"	"	"	"	"	"	Columbus, Ohio	"	
					"	"	Mansfield, Ohio	"	
I. T.	P. R. R.	I. T.	Hillery, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Newark, Ohio	P. R. R.	
"	"	"	"	"	"	"	Tiffin, Ohio	"	
"	"	"	"	"	Cleveland, "	"	Akron, Ohio	"	
"	"	"	"	"	"	"	New Castle, Pa.	"	
		"	Mackinaw, Ill.	"	Cincinnati, "	"	Akron, Ohio	"	
I. T.	P. R. R.	I. T.	Mackinaw, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Bellaire, Ohio	P. R. R.	
"	"	"	"	"	"	"	Wheeling, W. Va.	"	
"	"	"	"	"	"	"	Columbus, Ohio	"	
"	"	"	"	"	"	"	Mansfield, Ohio	"	
		"	"	"	"	"	Newark, Ohio	"	
I. T.	P. R. R.	I. T.	Mackinaw, Ill.	NYC (C)	Cincinnati, Ohio	B&O	Tiffin, Ohio	P. R. R.	
"	"	"	"	"	Cleveland, Ohio	"	Akron, Ohio	"	
I. T.	"	"	Bloomington, Ill.	NYC&StL RR	Fostoria, Ohio	B&O	New Castle, Pa.	"	
"	"	"	"	"	"	"	Akron, Ohio	"	
I. T.	P. R. R.	I. T.	Bloomington, Ill.	NYC&StL RR	Fostoria, Ohio	B&O	Bellaire, Ohio	P. R. R.	
"	"	"	"	"	"	"	Wheeling, W. Va.	"	
"	"	"	"	"	"	"	Mansfield, Ohio	"	
"	"	"	"	"	"	"	Newark, Ohio	"	
		"	"	"	"	"	New Castle, Pa.	"	
NYC (C)	P. R. R.	NYC (C)	Cincinnati, Ohio	B&O	Akron, Ohio	P. R. R.			
"	"	"	"	"	Bellaire, Ohio	P. R. R.			
"	"	"	"	"	Wheeling, W. Va.	"			
"	"	"	"	"	Columbus, Ohio	"			
		"	"	"	Mansfield, Ohio	"			
NYC (C)	P. R. R.	NYC (C)	Cincinnati, Ohio	B&O	Newark, Ohio	P. R. R.			
"	"	"	"	"	Tiffin, Ohio	"			
"	"	"	Cleveland, "	"	Akron, Ohio	"			
"	"	"	"	"	New Castle, Pa.	"			
		"	Toledo, "	D&TSL	Detroit, Mich.	G. T.—C. N.—Buffalo, N. Y.	P. R. R.		
NYC&StL	P. R. R.	NYC&StL	Fostoria, Ohio	B&O	Akron, Ohio	P. R. R.			
"	"	"	"	"	Bellaire, Ohio	"			
"	"	"	"	"	Wheeling, W. Va.	"			
"	"	"	"	"	Mansfield, Ohio	"			
"	"	"	"	"	Newark, Ohio	"			
		"	"	"	New Castle, Pa.	"			
PRR TP&W	P. R. R.	P. R. R. Direct							
	"	TP&W Effner, Ind.	P. R. R.						

## TARIFF AUTHORITY

Agent B. T. Jones Tariff 245-G I. C. C. 3356  
 NYC R. R. I. C. C. 5

NYC RR I. C. C. 2 (West OC Series)  
 NYC&StL — I. C. C. 4375

P. R. R. I. C. C. 390  
 P. R. R. I. C. C. 13

Showing Typical "Sought" Routes on Grain, in Carloads, from Representative C. F. A. Origins to Eastern Destinations; also Presently Effective Routes Between the same Representative Origins and Destinations and Comparative Data as to Mileages and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B			COLUMN C		
		Present Direct Routes			Present Routes via Which Hagerstown, Md. is Directly Intermediate (No Out-of Route or Back-haul Charge Involved)			"Sought" Routes via Which Hagerstown, Md. Would be Directly Intermediate (No Out-of Route or Back-haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Chicago, Ill.	Chester, Pa.	P. R. R. Chicago, Ill. To Chester, Pa.	821	1	B&O RR. To Cherry Run, W. Va. W. Md. Ry. To Shippensburg, Pa. Reading Co. To Chester, Pa.	687 54 165	3	C&O Ry. to Durbin, W. Va. W. Md. Ry. to Westport, Md. B&O RR. to Chester, Pa.	726 133 86	3
		B&O RR. Chicago, Ill. To Chester, Pa.	881	1	Total Miles	906		Total Miles	945	
								NYC RR. To Youngstown, Ohio P&LE RR. To Connellsville, Pa. W. Md. Ry. to York, Pa. P. R. R. To Chester, Pa.	415 123 246 95	
								Total Miles	879	
Indianapolis, Ind.	Freehold, N. J.	P. R. R. Indianapolis, Ind.	790	1	B&O RR. To Cherry Run, W. Va. W. Md. Ry. To Shippensburg, Pa. Reading Co. To Allentown, Pa. CRR of NJ To Freehold, N. J.	559 54 130 111	4	CI&L Ry. To Frankfort, Ind. NYC&StL RR. To Cleveland, Ohio W&LE Ry. To Pittsburgh Jet., Ohio P&WVa. Ry. To Conneilsville, Pa. W. Md. Ry. To York, Pa. P. R. R. To Freehold, N. J.	48 288 120 112 246 152	6
						854		Total Miles	966	



## EXHIBIT No. 15

## STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, from Representative C. F. A. Origins to Eastern Destinations; also Presently Effective Routes Between the same Representative Origins and Destinations and Comparative Data as to Mileages and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B			COLUMN C		
		Present Direct Routes			Present Routes via Which Hagerstown, Md. is Directly Intermediate (No Out-of Route or Back-haul Charge Involved)			"Sought" Routes via Which Hagerstown, Md. Would be Directly Intermediate (No Out-of Route or Back-haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Decatur, Ill.	New York, N. Y.	P. R. R. Decatur, Ill. To New York, N. Y.	987	1	Wabash Ry. To Toledo, Ohio	324	6	I. C. RR. To Louisville, Ky.	450	6
		B&O RR. To Park Jet. (Phila.), Pa.	920	3	W&LE Ry. To Pittsburgh Jet., Ohio	184		C&O Ry. To Durbin, W. Va.	503	
		Reading Co. To Allentown, Pa.	63		P&WVa. Ry. To Connellsville, Pa.	112		W. Md. Ry. To Westport, Md.	133	
		CRR of NJ to New York, N. Y.	89		W. Md. Ry. To Shippensburg, Pa.	204		B&O RR. To Park Jet. (Phila.), Pa.	100	
					Reading Co. To East Penn Jet., Pa.	129		Reading Co. To Allentown, Pa.	63	
					L. V. RR. To New York, N. Y.	100		CRR of NJ To New York, N. Y.	89	
		Total Miles	1072		Total Miles	1053		Total Miles	1338	
								Wabash Ry. To Chicago, Ill.	173	5
								NYC RR. To Youngstown, Ohio	415	
								P&LE RR. To Connellsville, Pa.	123	
								W. Md. Ry. To Fulton Jet., Md.	253	
								P. R. R. To New York City, N. Y.	198	
								Total Miles	1162	
								Wabash Ry. To Toledo, Ohio	324	4
								B&O RR. To Cherry Run, W. Va.	499	
								W. Md. Ry. to York, Pa.	96	
								P. R. R. To New York City, N. Y.	184	
								Total Miles	1103	
St. Louis, Mo.	Downingtown Pa.	P. R. R. St. Louis, Mo. To Downingtown, Pa.	945	1	B&O RR. To Cherry Run, W. Va.	784	3	CCC&StL RR. To Cleveland, Ohio	536	5
				1	W. Md. Ry. To Shippensburg, Pa.	54		NYC RR. To Youngstown, Ohio	92	
					Reading Co. To Downingtown, Pa.	157		P&LE RR. To Connellsville, Pa.	123	
					Total Miles	995		W. Md. Ry. To York, Pa.	246	
								P. R. R. To Downingtown, Pa.	68	
								Total Miles	1065	
								Southern Ry. To Louisville, Ky.	275	4
								C&O Ry. To Durbin, W. Va.	503	
								W. Md. Ry. To Fulton Jet., Md.	320	
								P. R. R. To Downingtown, Pa.	101	
								Total Miles	1199	
Toledo, Ohio	Wilmington, Del.	P. R. R. Toledo, Ohio To Wilmington, Del.	610	1	B&O RR. To Cherry Run, W. Va.	499	3	C&O Ry. To Durbin, W. Va.	548	3
				1	W. Md. To Shippensburg, Pa.	54		W. Md. Ry. To Westport, Md.	133	
		B&O RR. Toledo, Ohio To Wilmington, Del.	680		Reading Co. To Wilmington, Del.	167		B&O RR. To Wilmington, Del.	73	
					Total Miles	720		Total Miles	754	

## Tariff Authority—Routes:

Agent B. T. Jones' F. T. No. 245-G, ICC No. 3356.  
B&O RR. I. C. C. No. A-4.  
Wabash Ry. I. C. C. No. 6170.

Alton RR. ICC No. 89  
B&O RR. (ICC No. WL-10156  
(ICC No. 22070)  
CRR of NJ ICC No. G-3850  
C&O Ry. ICC No. 11081  
CB&Q RR. ICC No. 17392  
CI&L Ry. ICC No. 4431  
I. C. RR. ICC No. A-10441

L. V. RR. ICC No. C-8325  
NYC RR. (C) ICC No. 8515  
NYC RR. (M) ICC No. 5196  
NYC RR. (W) ICC No. LS-1356  
NYC&StL RR. ICC No. 5035  
N&W Ry. ICC No. 8377  
Penna. RR. ICC No. 398  
P&LE RR. ICC No. 2942

P&WVa. RR. ICC No. 303  
P. M. Ry. ICC No. 376  
Reading Co. ICC No. 1110  
Southern Ry. ICC No. A-10500  
Wabash Ry. ICC No. A-15221  
W. M. Ry. ICC No. 8392  
W&LE RR. ICC No. 1854

EXHIBIT No. 16  
STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B		
		Present Direct Routes			"Sought" Routes via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Chicago, Ill.	Dover, Del.	P. RR. Chicago, Ill. To Dover, Del.	847	1	NYC RR. To Youngstown, Ohio.	415	4
					P&LE RR. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Dover, Del.	119	
					Total Miles	903	4
					NYC&StL Ry. To Fostoria, Ohio.	243	
					B&O RR. To Cherry Run, W. Va.	446	
					W. Md. Ry. To Hagerstown, Md.	19	
					P. R. R. To Dover, Del.	205	
					Total Miles	913	3
					C&O Ry. To Durbin, W. Va.	726	
					W. Md. Ry. To Fulton Jet., Md.	320	
					P. R. R. To Dover, Del.	100	
					Total Miles	1146	4
					Erie RR. To Youngstown, Ohio	427	
					P&LE RR. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Dover, Del.	119	
					Total Miles	915	5
					Wab. Ry. To Toledo, Ohio.	234	
					W&LE Ry. To Pittsburgh Jet., Ohio.	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. R. R. To Dover, Pa.	205	
					Total Miles	904	

EXHIBIT No. 16  
STATEMENT—Cont'd

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved—Cont'd.

From	To	COLUMN A			COLUMN B		
		Present Direct Routes			"Sought" Routes via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Peoria, Ill.	Georgetown, Del.	P. R. R. Peoria, Ill. to Georgetown, Del.	1045	1	CCC&StL Ry. To Cleveland, Ohio.	436	4
					NYC RR. To Youngstown, Ohio.	92	
					PALE RR. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Georgetown, Del.	160	
					Total Miles	1117	4
					NYC&StL Ry. To Fostoria, Ohio.	373	
					B&O RR. To Cherry Run, W. Va.	446	
					W. Md. Ry. To Fulton Jet., Md.	103	
					P. R. R. To Georgetown, Del.	141	
Indianapolis, Ind.	Cambridge, Md.	P. RR. Indianapolis, Ind. to Cambridge, Md.	827	1	Total Miles	1063	6
					CRI&P Ry. To Chicago, Ill.	161	
					Wabash Ry. To Toledo, Ohio.	234	
					W&LE Ry. To Pittsburgh Jet., Ohio	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	4
					P. R. R. To Georgetown, Del.	246	
					Total Miles	1106	
					NYC&StL Ry. To Fostoria, Ohio.	208	
					B&O RR. To Cherry Run, W. Va.	446	
					W. Md. Ry. To Fulton Jet., Md.	103	4
					P. R. R. To Cambridge, Md.	172	
					Total Miles	927	
					CCC&StL Ry. To Cleveland, Ohio.	284	4
					NYC RR. To Youngstown, Ohio.	92	
					PALE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Cambridge, Md.	188	
					Total Miles	933	4
					B&O RR. To Cincinnati, Ohio.	125	
					C&O Ry. To Durbin, W. Va.	440	
					W. Md. Ry. To Fulton Jet., Md.	320	
					P. R. R. To Cambridge, Md.	172	
					Total Miles	1057	

EXHIBIT No. 16  
STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B		
		Present Direct Routes			"Sought" Route via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Decatur, Ill.	Salisbury, Md.	P. RR. Decatur, Ill. to Salisbury, Md.	979	1	B&O RR. To Cherry Run, W. Va.	712	3
					W. Md. Ry. To Fulton Jct., Md.	103	
					P. R. R. To Salisbury, Md.	155	
					Total Miles	970	5
					Wabash Ry. To Toledo, Ohio.	324	
					W&LE Ry. To Pittsburgh Jct., Ohio.	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. R. R. To Salisbury, Md.	260	
					Total Miles	1049	
St. Louis, Mo.	Franklin City, Va.	P. RR. St. Louis, Mo. to Franklin City, Va.	1093	1	I. C. RR. To Mattoon, Ill.	92	
					CCC&StL Ry. To Cleveland, Ohio.	412	
					NYC RR. To Youngstown, Ohio.	92	
					P&LE Ry. To Connellsville, Pa.	123	5
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Salisbury, Md.	174	
					Total Miles	1139	
					B&O RR. To Cherry Run, W. Va.	784	3
					W. Md. Ry. To Fulton Jct., Md.	103	
					P. RR. To Franklin City, Va.	196	
					Total Miles	1083	4
					NYC&StL Ry. To Fostoria, Ohio.	439	
					B&O RR. To Cherry Run, W. Va.	446	
					W. Md. Ry. To Hagerstown, Md.	19	
					P. RR. To Franklin City, Va.	300	4
					Total Miles	1204	
					CCC&StL Ry. To Cleveland, Ohio.	536	
					NYC RR. To Youngstown, Ohio.	92	4
					P&LE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. RR. To Franklin City, Va.	214	5
					Total Miles	1211	
					Wabash Ry. To Toledo, Ohio.	442	
					W&LE Ry. To Pittsburgh Jct., Ohio.	184	5
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. RR. To Franklin City, Va.	300	
					Total Miles	1207	



## EXHIBIT No. 16

## STATEMENT

Showing Typical "Sought" Routes on Grain, in Carloads, From Representative C. F. A. Origins to Destinations on the Del-Mar-Va. Division of the Pennsylvania Railroad; also Presently Effective Routes Between the Same Representative Origins and Destinations and Comparative Data as to Mileage and Line Haul Carriers Involved.

From	To	COLUMN A			COLUMN B		
		Present Direct Routes			"Sought" Route via Which Hagerstown, Md. Would Be Directly Intermediate (No Out of Route or Back Haul Charge Involved)		
		Route	Miles	Number of Line Haul Carriers	Route	Miles	Number of Line Haul Carriers
Toledo, Ohio.	Cape Charles, Va.	P. RR. Toledo, Ohio To Cape Charles, Va.	782	1	B&O RR. To Cherry Run, W. Va.	499	3
					W. Md. Ry. To Fulton Jct., Md.	103	
					P. R. R. To Cape Charles, Va.	244	
					Total Miles	846	4
					W&LE Ry. To Pittsburgh Jct., Ohio.	184	
					P&WVa. Ry. To Connellsville, Pa.	112	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. R. R. To Cape Charles, Va.	349	
					Total Miles	814	
					NYC RR. To Youngstown, Ohio.	182	4
					P&LE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To York, Pa.	246	
					P. R. R. To Cape Charles, Pa.	263	
					Total Miles	814	
					C&O Ry. To Durbin, W. Va.	548	3
					W. Md. Ry. To Fulton Jct., Md.	320	
					P. RR. To Cape Charles, Va.	244	
					Total Miles	1112	
					NYC&StL Ry. To Cleveland, Ohio.	196	5
					NYC RR. To Youngstown, Ohio.	92	
					P&LE Ry. To Connellsville, Pa.	123	
					W. Md. Ry. To Hagerstown, Md.	169	
					P. RR. To Cape Charles, Va.	349	
					Total Miles	929	

## TAIRFF AUTHORITIES ROUTES

Agent B. T. Jones F. T. No. 245-G, I. C. C. No. 3356  
Pa. R. R. I. C. C. No. 399.

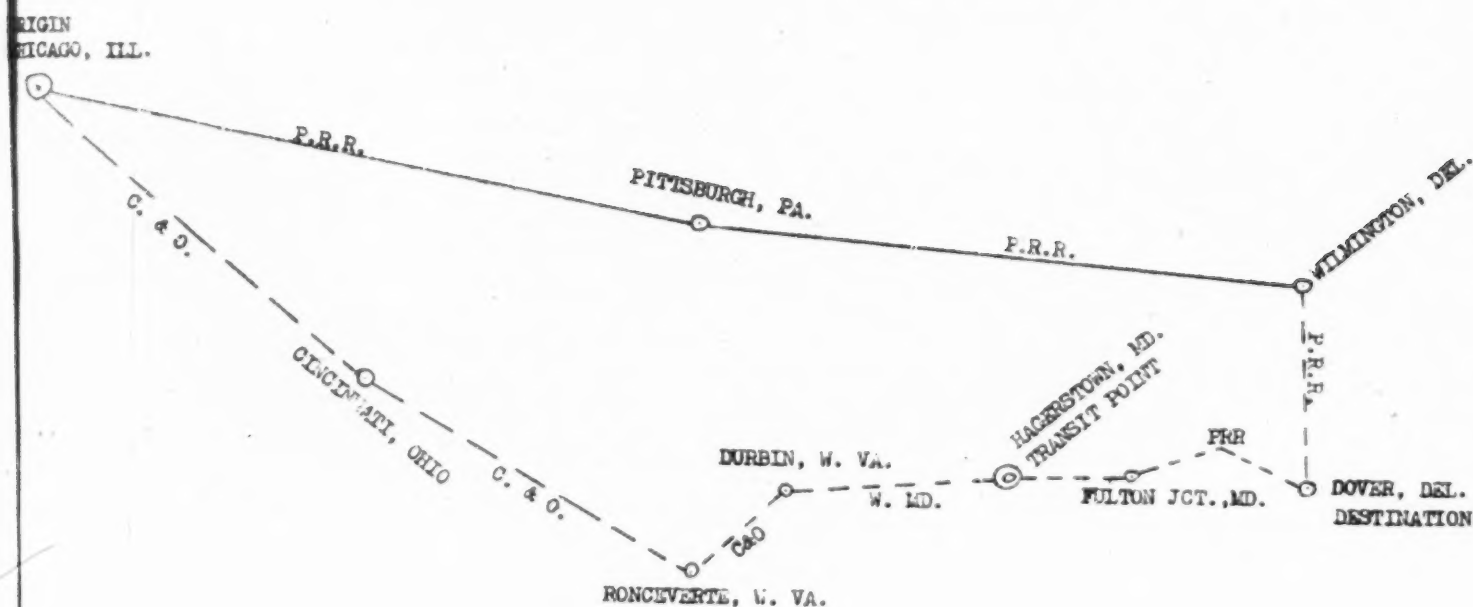
## TARIFF AUTHORITIES MILEAGES

B&O RR. I. C. C. No. WL-10156  
B&O RR. " " 22070  
C&O Ry. " " 11081  
CI&L Ry. " " 4430  
CRI&P Ry. " " 8248  
Erie RR. " " A-5534  
I. C. RR. " " A-10441  
NYC RR. (C) " " 8515  
NYC RR. (W) " " LS-1356

NYC&StL RR. I. C. C. No. 5035  
N&W Ry. " " 8377  
Pa. RR. " " 398  
P&LE RR. " " 2942  
P&WVa. RR. " " 303  
Wab. Ry. " " A-15221  
W. Md. Ry. " " 8392  
W&LE Ry. " " 7854



## EXHIBIT No. 17



## EXPLANATION:

Normal route.

Example of principle involved in complaint.

Under normal route FRR haul is 847 miles.

Under route sought by complainant (shown ---) FRR haul is 100 miles.

Reduction, 747 miles, is equal to 88%.

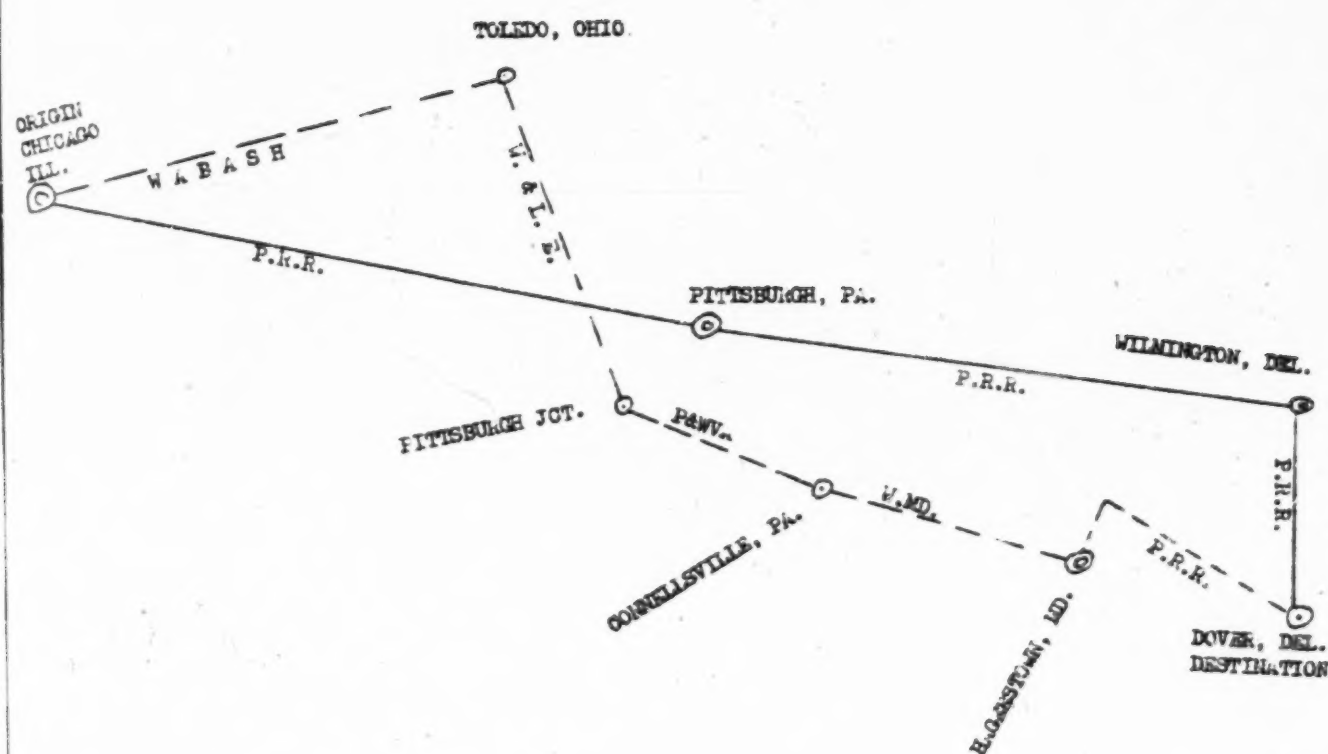
Under normal route no interchange is required with other railroads.

Under sought route there are two interchanges required.

The sought route intersects two additional intermediate lines.

Total mileage via sought route is 1146, or 299 miles greater than normal route.

## EXHIBIT No. 18



## EXPLANATION:

Normal route  
 Example of principle involved in complaint

Under normal route P&M haul is 847 miles.

Under route sought by complainant (shown ---) P&M haul is 205 miles.

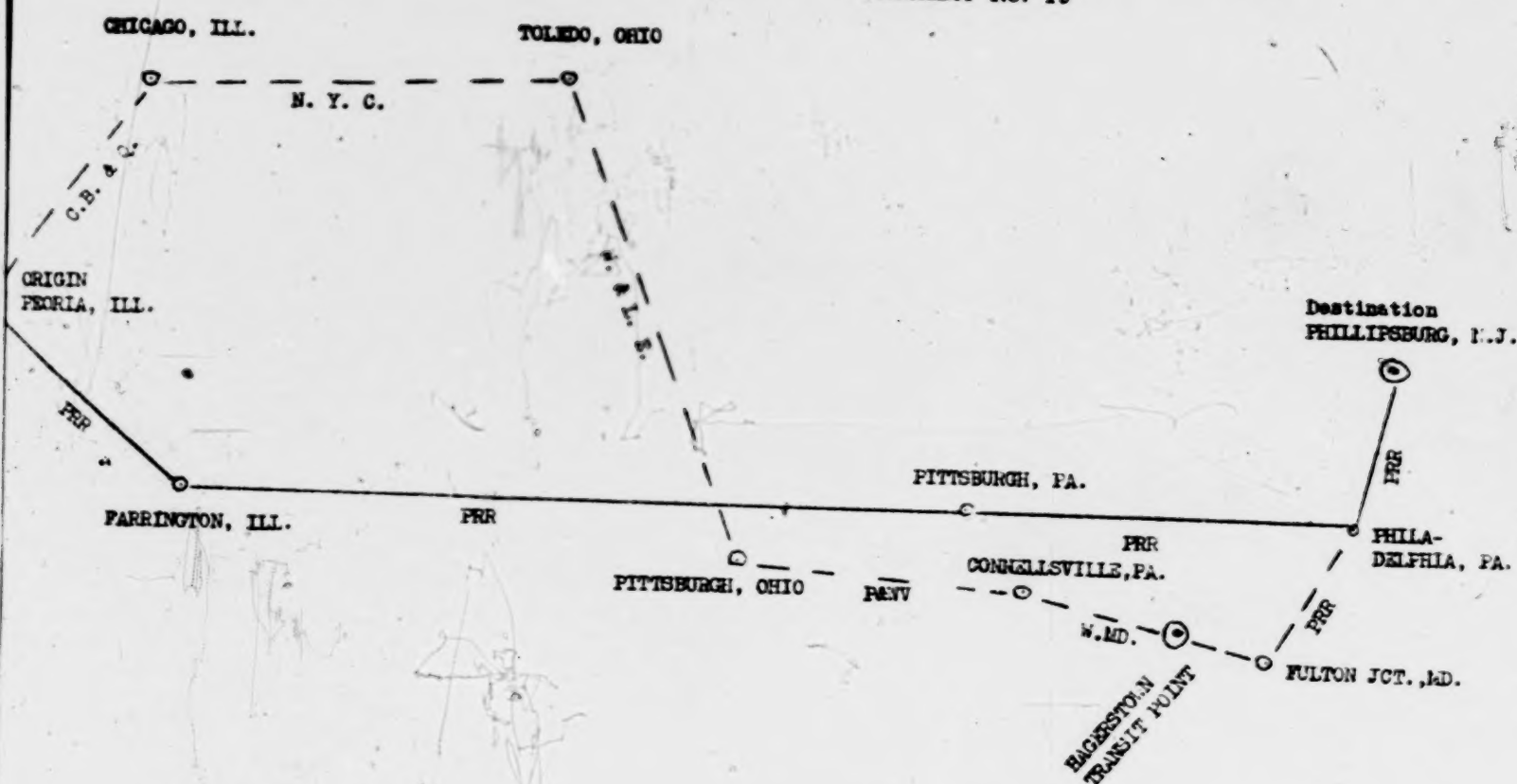
Reduction, 642 miles, is equal to 76%.

Under normal route no interchange is required with other railroads.

Under sought route there are four interchanges required, viz;

Toledo, Ohio  
 Pittsburgh Jct.  
 Connellsville, Pa.  
 Hagerstown, Md.

## EXHIBIT No. 19



## EXPLANATION:

Normal route.

Example of principle involved in complaint

Under normal route PRR haul is 1052 miles.

Under route sought by complainant (shown ---) PRR haul is 183 miles.

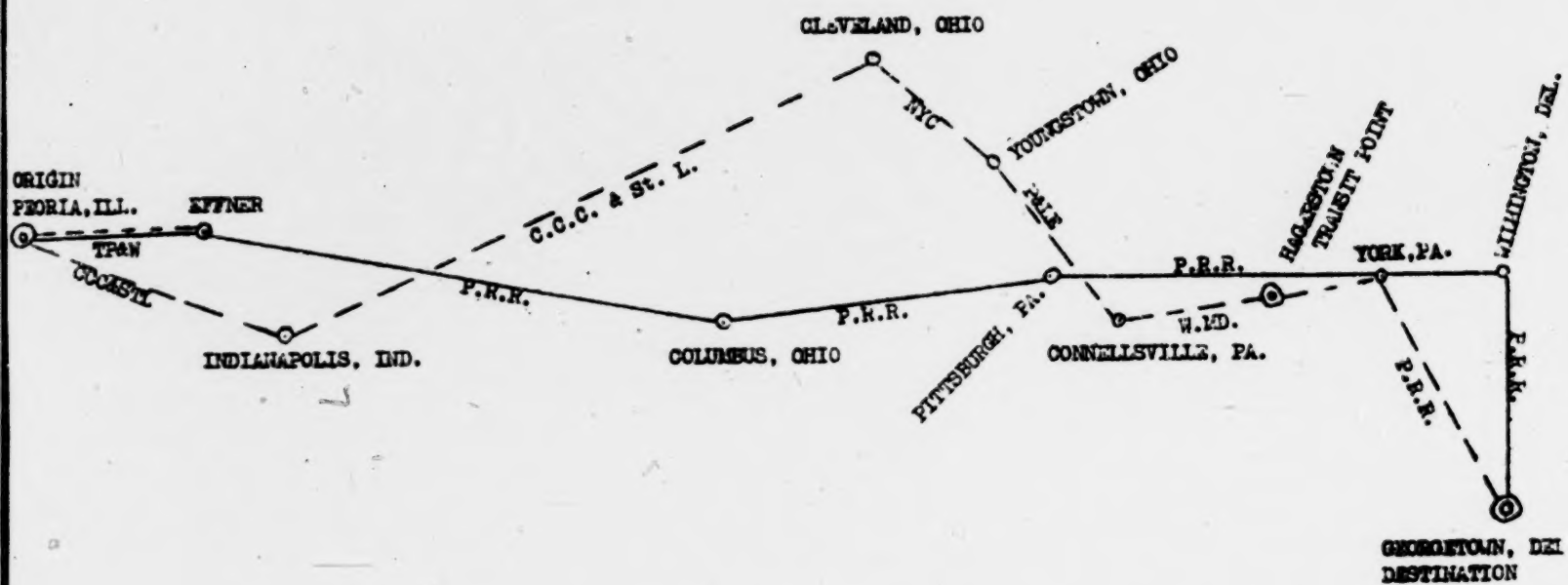
Reduction, 869 miles, is equal to 82.5%.

Under normal route there is no interchange with other carriers.

Under sought route there are 5 interchanges required; viz.,

Chicago, Illinois  
 Toledo, Ohio  
 Pittsburgh Jct., Ohio  
 Connellsville, Pa.  
 Fulton Jct., Maryland

## EXHIBIT No. 20



## EXPLANATION:

Normal route  
 Example of principle involved in complaint

Under normal route PRR haul is 870 miles.

Under route sought by complainant (shown ---) PRR haul is 100 miles

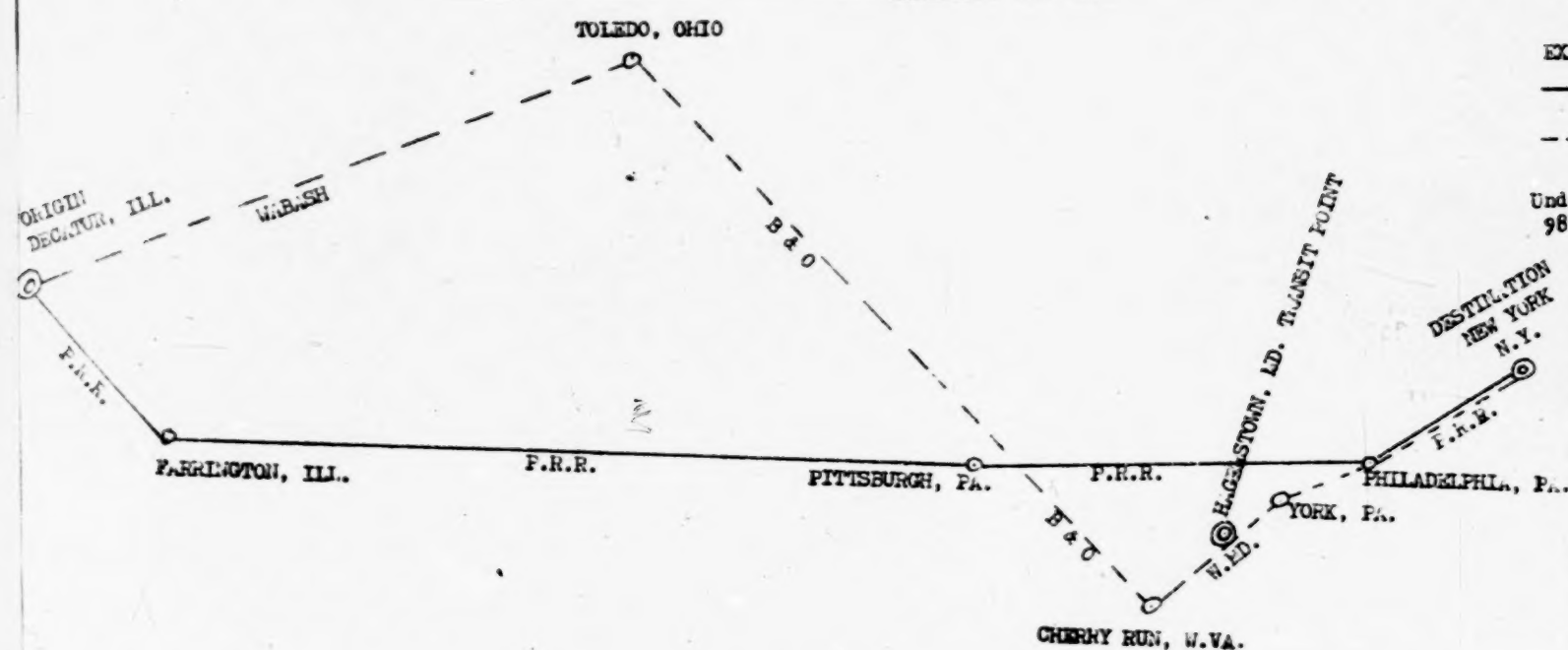
Reduction, 770 miles, is equal to 81.5%.

Under normal route one interchange is required between TP&W and PRR at Effner, Indiana.

Under sought route there are four interchanges required - Cleveland, Youngstown, Connellsville, & York.

The sought route interjects three additional intermediate lines between the originating and delivering line notwithstanding that those carriers have a direct interchange.

## EXHIBIT No. 21



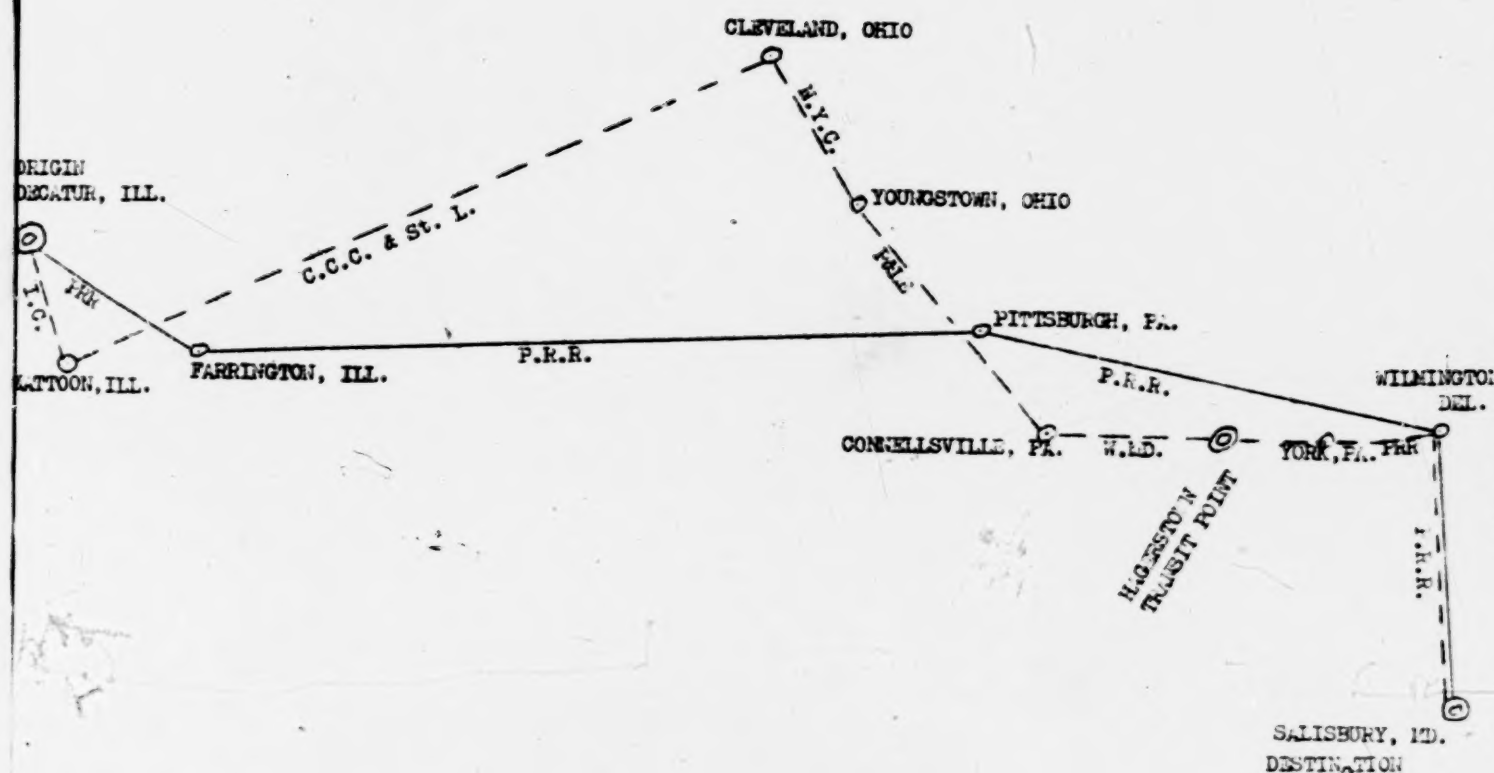
## EXPLANATION:

Normal route

Example of principle  
involved in complaintUnder normal route 15K haul is  
987 miles.Under route sought by com-  
plaint (shown ---) 15K haul  
is 184 miles.Reduction, 803 miles, is  
equal to 81.5%.Under normal route there is  
no interchange with other  
carriers.Under sought route there are  
three interchanges required;  
viz.,Toledo, Ohio  
Cherry Run, W. Va.  
York, Pa.



## EXHIBIT No. 22



## EXPLANATION:

———— Normal route

----- Example of principle  
involved in complaint

Under normal route PRR haul is  
979 miles.

Under route sought by complainant  
(shown -----) PRR haul is 174 miles.

Reduction, 805 miles, is equal to  
82%.

Under normal route there is no in-  
terchange with other carriers.

Under sought route there are five  
interchanges required; viz.,

Mattoon, Illinois  
Cleveland, Ohio  
Youngstown, Ohio  
Connellsville, Pa.  
York, Pa.

## EXHIBIT No. 23

## STATEMENT

Showing the Reshipping Rates on Grain, carloads, from Chicago, Ill. to New York, N. Y., Philadelphia, Pa. and Baltimore, Md., since the year 1910 and comparing such Rates with First and Sixth Class Rates and Percentage thereof.  
(Rates shown in cents per 100 pounds)

Date	From Chicago to New York					From Chicago to Philadelphia					From Chicago to Baltimore					Explanation of change
	Grain Rate	1st Class	6th Class	Percentage of 1st	Percentage of 6th	Grain Rate	1st Class	6th Class	Percentage of 1st	Percentage of 6th	Grain Rate	1st Class	6th Class	Percentage of 1st	Percentage of 6th	
1910	16	75	25	21.3	64.0	14	73	23	19.2	60.9	13	72	22	18.1	59.1	Prior to 5% advance.
Jan. 20, 1915	16.8	78.8	26.3	21.3	63.9	14.8	76.8	24.3	19.3	60.9	13.8	75.8	23.3	18.2	59.2	5% increase—I&S 333.
Mar. 25, 1918	19.5	90	30.0	21.6	65.0	17.5	88	28.0	19.9	62.9	16.5	87	27.0	19.0	61.6	15% increase—Ex Parte 57
June 25, 1918	24.5	112.5	37.5	21.8	65.3	22.5	110	35	20.4	64.3	21.5	109	34	19.7	63.2	25% increase—General Order 28.
Aug. 26, 1920	34.5	157.5	52.5	21.9	65.7	32.5	155.5	50.5	20.9	64.4	31.5	154.5	49.5	20.4	63.6	40% increase—Ex Parte 74.
Sept. 28, 1921	30	157.5	52.5	19.0	57.1	28	155.5	50.5	18.0	55.4	27	154.5	49.5	17.5	54.5	Voluntary reductions made on grain.
July 1, 1934	24.5	152	42	16.1	58.3	22.5	145	40	15.5	56.3	21.5	140	39	15.4	55.1	Voluntary reductions made on grain.
Mar. 28, 1938 (Present)	26	167	46	15.6	56.7	24	160	44	15.0	54.5	23	154	42	14.9	54.8	5% increase—Ex Parte 115-123.
% of Increase in rate since year 1910	62.5	122.7	84.0	—	—	71.4	119.2	91.3	—	—	76.9	113.9	90.9	—	—	—

## TARIFF AUTHORITIES:

Grain  
P. R. R. ICC F-228.  
P. R. R. ICC F-626.  
P. R. R. ICC F-897.  
P. R. R. ICC F-941.  
W. J. Kelly's ICC 839.  
W. J. Kelly's ICC 1126.  
B. T. Jones' ICC 2515.  
B. T. Jones' ICC 3055.  
B. T. Jones' ICC 3100.  
P. R. R. ICC 2869.  
P. R. R. ICC 964.

Class Rates  
PCC&StL ICC P-230—1910.  
PCC&StL ICC 636—Jan. 28, 1915.  
PCC&StL ICC P-772—Mar. 25, 1918.  
PCC&StL ICC P-964—June 25, 1918.  
CFA Tariff 217, ICC 743—Aug. 26, 1920.  
CFA Tariff 217-A, ICC 1100—Sept. 28, 1921.  
CFA Tariff 490, ICC 2455—July 1, 1934.  
CFA Tariff 490-A, ICC 2767—Mar. 28, 1938 and Present.



[fol. 717]

## EXHIBIT No. 24

Statement of the Class Rates Effective from Chicago to New York prior to the 5% advance in 1914 and the Class Rates Presently Effective Together with the Percentage of Increase Per Class.

	1	2	3	4	5	6
1914.....	.75	.65	.50	.35	.30	.25
Present.....	1.67	1.42	1.17	.84	.58	.46
Percentage of increase.....	122.6%	118.5%	134%	140%	93.3%	84%

## Tariff Authority

Penna Company ICC F-419  
Agent Jones ICC 2767

[fol. 718]

## EXHIBIT No. 25

Statement of the Base Rates on Sundry Commodities from Chicago, Ill. to New York prior to the 5% advance, and the Presently Effective Base Rates, together with the Percentage of Increase in Such Rates, and Comparing Such Percentage Increase with the Increase on Grain, Carload.

## Base rates from Chicago to New York

Commodity	Prior to 5% advance	Present rate	Percentage increase present rate over rate prior to 5% adv.
Grain.....	.16	.26	62.5
Ammonical liquors.....	.22	.38	72.7
Billets.....	5.00 GT	9.20 GT	84.0
Brick.....	.21	.363	72.9
Cattle.....	.30	.56	86.7
Chloride of lime.....	.22	.46	109.1
Iron & steel articles.....	.25	.52	108.0
Iron, pig.....	4.75 GT	9.20 GT	93.7
Lye, concentrated.....	.22	.50	127.3
Lead, pig.....	.175	.35	100.0
Lead, sublimed, dry.....	.20	.42	110.0
Meats, dressed.....	.45	.83	84.4
Meats, salted.....	.30	.63	110.0
Paper, building and roofing.....	.20	.42	110.0
Paper, newsprint.....	.20	.42	110.0
Nitre cake.....	.22	.38	72.7
Ore, zinc.....	.135	.35	159.3
Pitch and tar.....	.22	.38	72.7
Potash.....	.22	.38	72.7
Soda and soda ash.....	.22	.38	72.7
Salt cake.....	.22	.39	77.3
Salts, epsom, glauber.....	.22	.46	109.1
Wet wood pulp.....	.22	.46	109.1
Zinc anodes.....	.20	.35	75.0

## Tariff Authority

Penna Company ICC F-419  
Agent Jones ICC 3432  
" ICC 3539  
" ICC 2767

[fol. 719]

## EXHIBIT No. 26

Excerpts from B&O RR. ICC 23273 showing extent transit on grain and grain products is available at Hagerstown, Md., on shipments destined east thereof.

Page 15

## Application of Transit Privileges

Subject to rules and regulations herein, and to the Exception shown below, the commodities enumerated in Rule 1, Page 16, on traffic originating at or west of the western termini and when from connecting lines delivered to B. & O. R. R., at junctions western termini (See Note 3) and west thereof as defined in Agent B. T. Jones' Territorial Directory 3-G, I. C. C. 3319, will be entitled to the privilege of milling, mixing or malting in transit at any station on the B. & O. R. R. at or East of Pittsburgh, Pa., Wheeling, W. Va., Bellaire, Ohio, Parkersburg, Huntington or Kenova, W. Va., which is directly intermediate to the final destination of the milled, mixed or malted products, provided such final destination be New York, N. Y., Brooklyn, N. Y., B. & O. R. R. delivery, via Park Jct., Pa. or B. & O. R. R. station east of the transit point;

Page 3:

## Rule 20 Milling, Mixing or Malting of Grain, Grain Products or By-Products

Wheat, Corn, Rye, Oats, Buckwheat and commodities covered by Rule 1, Page 1, originating at or West of the western termini and when from connecting lines delivered to the B. & O. R. R. at junctions western termini (See Note 3) and west thereof as described in agent B. T. Jones' Territorial Directory 3-G, I. C. C. 3319, may be milled, mixed or malted in transit at stations named below, subject to the milling, mixing or malting transit charges shown below:

Item	Transit Point	Transit Charge Cents per 100 lbs.	When final destination of milled, mixed or malted product is
185	Hagerstown, Md.	3¼	New York, N. Y., B. & O. R. R. delivery (via Park Jct. Pa.) S. I. R. T. Ry. (B. & O. System) (via Cranford Jct., N. J. and Park Jct., Pa.), Philadelphia, Pa., Baltimore, Md., Georgetown (Washington), Shepherd and Washington, D. C. and intermediate points on the Baltimore and Ohio R. R., including branch line stations east of the transit point.
430	Hagerstown, Md.	3¼	Points on R. F. & P. E. R. Points on the Sou. Ry. Alexandria to Lynchburg, Va., as indicated by index numbers 15 to 320), inclusive, as per A. L. Leland's I. C. C. No. A-19. Points on B. & O. R. R. and V. R. R. of Va.: Hagerstown, Md. to Lexington, Va., inclusive, and including Harrisonburg Extension of Sou. Ry. from Strasburg Jct. to Harrisonburg, Va. Points on the C. W. Ry. via C. W. Ry. Jct. (Harrisonburg), Va. Points described in Note 1, when reforwarded via Potomac Yard, Va., Sou. Ry. and Lynchburg, Va. on basis of rate to Lynchburg, Va., plus rate south of Lynchburg, Va., per Note 1, except where through rates are published.



[fol. 720]

Excerpts from B&O RR ICC 23273, showing extent transit on grain and grain products is available at Hagerstown, Md. on shipments destined east thereof.

Item	Transit Point	Transit Charge Cents per 100 lbs.	When final destination of milled, mixed or malted product is
435	Hagerstown, Md.	3¼	Points on the W. & O. D. Ry., Alexandria, Va. to Purcellville, Va., index Nos. 5 to 120, per A. P. Leland's I. C. C. No. A-19.
440	Hagerstown, Md.	3¼	Points on the Sou. Ry.: Wellington, Va. to Riverton, Va., inclusive (Index Nos. 455 to 530, inclusive) as per A. P. Leland's I. C. C. A-19.
445	Hagerstown, Md.	3¼	Points on the M. & P. R. R. Points on the B. & Ann. R. R., as per A. P. Leland's I. C. C. A-19.

Note—For explanation of notes (other than Note 3) and references, See Tariff B&O RR ICC 23273.

Note 3—Will not apply on shipments originating in Central Freight Association territory or from beyond such territory when received by the Baltimore and Ohio Railroad Company from the Pennsylvania Railroad at Buffalo, N. Y., Pittsburgh, Pa., Millvale, Willow Grove or Bessemer, Pa. For description of Central Freight Association territory, refer to Agent B. T. Jones' Territorial Directory No. 3-G, I. C. C. 3319, supplement thereto or successive issues thereof.

[fol. 721]

## EXHIBIT No. 27

Excerpts from B&O R. R. ICC 23273 showing extent transit on grain and grain products is available at Winchester, Va. on shipments destined east thereof.

## Page 32

Rule 20 Milling, Mixing or Malting of grain, Grain Products or By-Products.

Wheat, Corn, Rye, Oats, Buckwheat and commodities covered by Rule 1, page 16, originating at or west of the Western Termini and when from connecting lines delivered to the B&O R. R. at junctions Western Termini (see Note 3) and west thereof, as described in Agent B. T. Jones Territorial Directory 3-G, ICC 3319 may be milled mixed or malted in transit at stations named below, subject to the milling, mixing or malting in transit charges shown below.

Item	Transit Point	Transit Charge Cents Per 100 lbs.	When final destination of milled, mixed or malted products is:
195	Winchester, Va.	3¼¢(A)	Points on R. F. & P. R. R., south of Alexandria, Va. Via Potomac Yard, Va., to points on Sou. R'y, Lynchburg, Va., and north to Alexandria, Va., exclusive (as indicated by Index Nos. 20 to 320 and 450 to 465, inclusive, as per A. P. Leland's I. C. C. No. A-19. Points described in Note 1, when reforwarded via Potomac Yard, Va., R. F. & P. RR. and Richmond, Va., or via Potomac Yard, Va. Sou. Ry and Lynchburg, Va., on basis of rates to Richmond or Lynchburg, Va. plus rates south of Richmond or Lynchburg, Va. per Note 1, except where through rates are published.

## Page 50

Item 510	Winchester, Va.	3¼¢(A)	Via Harpers Ferry, W. Va., to New York, N. Y. B&O R. R. delivery (Park Junction, Pa.) S. I. R. T. Ry. (B. & O. System) (via Cranford Jet., N. J., and Park Jet., Pa.), Philadelphia, Pa., Baltimore, Md., Washington, Shepherd and Georgetown (West Washington), D. C., or other B. & O. R. R. points intermediate thereto, including branch line stations east of transit point.
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For explanation of notes (other than Note 3) and references see Tariff (B&O R. R. I. C. C. 23273).

(A)—Includes charge for the excess haul between Winchester, Va. and Harper's Ferry, W. Va. of 63 miles.

Note 3—Will not apply on shipments originating in Central Freight Association territory or from beyond such territory when received by The Baltimore and Ohio Railroad Company from The Pennsylvania Railroad Company at Buffalo, N. Y., Pittsburgh, Pa., Millvale, Willow Grove, or Bessemer, Pa. For description of Central Freight Association Territory refer to Agent B. T. Jones' Territorial Directory No. 3-G, I. C. C. No. 3319 (B. & O. R. R., Agency Freight Tariff No. 4017, supplements thereto or successive issues thereof.

[fol. 722]

## EXHIBIT No. 28

Statement showing typical examples of transit arrangements on lumber and forest products applicable at B. & O. R. R. points as shown in B. & O. R. R. ICC 23403.

Tariff Reference	Transit Point	Commodity	Territory	Out of Route or Back haul Charge (Per 100 lbs.)	Transit Charge
Item 60	Hagerstown, Md.	Lumber and Forest Products	All points between which there is excess or out of route service via transit point	4½¢(B)	\$6.93 per car
Item 90	Clarksburg, W. Va.	Logs	All points between which there is excess or out of route service via transit point	3-3/4¢(A)	2-3/4¢ per 100 lbs.
Item 110	Hyndman, Pa.	Lumber and Forest Products	All points between which there is excess or out of route service via transit point.	4½¢(C)	2-3/4¢ per 100 lbs.
Item 120	Moorefield, W. Va.	Lumber	All points between which there is excess or out of route service via transit point.	4½¢(C)	\$6.93 per Per car
Item 160	Weston, W. Va.	Lumber and Forest Products	All points between which there is excess or out of route service via transit point.	4½¢(C)	2-3/4¢ per 100 lbs.

- (A) Covers excess or out of route distances from 35 to and including 50 miles.  
 (B) " " " " " " " " of 48 miles.  
 (C) " " " " " " " " from 30 to and including 60 miles.

[fol. 723]

## EXHIBIT No. 29

Statement showing charges applied on shipments moving via B&O R. R., stopped in transit for partially unloading or to complete loading at Hagerstown, Md., as provided for in B&O R. R., I. C. C. 23391.

Page 5

## Rates

Rule 25—The rate to apply shall be the applicable carload rate (in effect at the time of shipment from point of origin) from point of origin to destination via stop-off point or points, except as provided in Note 1, plus stop-off charge provided in Rule 35, subject to certain modifications as set forth in paragraphs a, b, & c of Rule 25.

Page 5

## Stop-Off Charge

Rule 35—The charge for stop will be made whether the car is set out of train or freight permitted to be taken from or put into the car while standing in train. The charge for each stop-off will be \$6.93 per car per stop.

Page 3

## Note 1 Exceptions

(L) Hagerstown, Md. and Security, Md., and intermediate points will be considered directly intermediate to Brunswick, Md., on shipments originating at Cumberland, Md., or points west thereof, when destined to points beyond Brunswick, Md., subject to charge of eleven dollars (\$11.00) per car in addition to the published stop-off charge as provided in Rule 35, page 5.

Page 5

## Stop-off Must Be Intermediate

Rule 5—The point at which car is stopped must be directly intermediate on the route from original point of shipment to final destination, except as provided in Note 1, and the rate with stop-off privileges, must be applicable via or through the point at which car is stopped.

[fol. 724]

## EXHIBIT No. 30

Statement showing typical routes on Grain and Grain Products, carloads, from Chicago, Ill., to destinations on the Baltimore and Ohio R. R. of which University, D. C., Baltimore, Md., Aberdeen, Md., and Sykesville, Md. are representative.

Origin Road	Destination Road	Route
B. & O. R. R.	B. & O. R. R.	B. & O. R. R. direct.
CI&L Ry.	B. & O. R. R.	CI&L Ry., Mitchell, Ind., B&O RR.
"	"	" Indianapolis, Ind., B&O RR.
"	"	" Alida, Ind. "
Erie RR	B&O RR	Erie RR., Youngstown, O., B&O RR.
"	"	" Mansfield, O., B&O RR.
G. T. Ry.	B&O RR	G. T. Ry., Wellsboro, Ind., B&O RR.
Penna. RR	B&O RR	Penna. RR., Wheeling, W. Va., B&O RR.
"	"	" Bellaire, O. "
"	"	" Zanesville, O. "
"	"	" Akron, O. "
"	"	" Avilla, Ind. "
"	"	" Lima, O. "
"	"	" Mansfield, O. "
"	"	" Columbus, O. "
"	"	" Newark, O. "
"	"	" Indianapolis, Ind. "
"	"	" Cincinnati, O. "
"	"	" Seymour, Ind. "
"	"	" Hamilton, O. "
Wabash Ry.	B&O RR	Wabash Ry., Toledo, O., B&O RR.
"	"	" Willow Creek, Ind., B&O RR.
"	"	" Toledo, O., W&LE Ry, Monroeville, B&O
"	"	" " Zanesville, O., B&O
"	"	" " W&LE, Pittsburgh Jct., O., P&WVa.,
"	"	" " Bruceton, Pa., B&O RR.
"	"	" Toledo, O., W&LE., Terminal Jct., B&O.
CSS&SB RR.	B&O RR	CSS&SB RR., Miller, Ind., B&O RR.
"	"	" Michigan City, Ind., NYC&StL Ry.,
"	"	" Walkerton, Ind., B&O RR.
"	"	" Michigan City, Ind., NYC&St. L. Ry.,
"	"	" Postoria, O., B&O RR.
"	"	" Michigan City, Ind., NYC&StL., Painesville, O., B&O RR.



[fol. 725]

Origin Road	Destination Road	Route
NYC R. R.	B. & O. R. R.	N.Y.C. R.R., Toledo, O., W. & L. E. Ry., Monroe- ville, O., B. & O. R. R.
"	"	" Toledo, O., B. & O. R. R.
"	"	" Willow Creek, Ind., B. & O. R. R.
"	"	" Fostoria, O., B. & O. R. R.
"	"	" Galatea, O., B. & O. R. R.
"	"	" Toledo, O., W. & L. E. Ry., Terminal Jct., O., B. & O. R. R.
"	"	" Toledo, O., W. & L. E. Ry., Pittsburgh Jct., O., P. & W. Va. Ry., Bruceton, Pa., B. & O. R. R.
"	"	" Ivorydale, O., B. & O. R. R.
NYC&StL Ry.	B. & O. R. R.	N.Y.C. & St.L.Ry., Painesville, O., B. & O. R. R.
"	"	" Cleveland, O., W. & L. E. Ry., Terminal Jct., O., B. & O. R. R.
"	"	" Cleveland, O., W. & L. E. Ry., Zanesville, O., B. & O. R. R.
"	"	" Fostoria, O., B. & O. R. R.
"	"	" Bellevue, O., W. & L. E. Ry., Terminal Jct., O., B. & O. R. R.
CMStP&P R. R.	B. & O. R. R.	C.M.St.P. & P.R.R. Seymour, Ind., B. & O. R. R.
"	"	" West Dana, Ind., B. & O. R. R.
C. & O. Ry.	B. & O. R. R.	C. & O. Ry. Cincinnati, O., B. & O. R. R.

Authority—Routing Provisions shown in B. T. Jones' ICC 3356—Section 3.

[fol. 726]

## EXHIBIT No. 31

Statement showing typical routes on Grain and Grain Products, carloads, from Decatur, Ill., to destinations on the Baltimore and Ohio Railroad of which University, D. C., Baltimore, Md., Aberdeen, Md. and Sykesville, Md. are representative.

Origin Road	Destination Road	Route
B&O RR	B&O RR.	B&O RR direct.
Wabash Ry.	B&O RR	Wabash Ry., Defiance, O., B&O RR.
"	"	Toledo, O., W&LE Ry., Monroeville, O., B&O RR.
"	"	Toledo, O., W&LE Ry., Terminal Jct., O., B&O RR.
"	"	Toledo, O., W&LE Ry., Zanesville, O., B&O RR.
"	"	Toledo, O., W&LE Ry., Pittsburgh Jct., O., P&W Va. Ry., Bruceton, Pa., B&O RR.
Penna. R. R.	B&O RR	Penna. RR., Bellaire, O., B&O RR.
"	"	Zanesville, O., B&O RR.
"	"	Akron, O., B&O RR.
"	"	Mansfield, O., B&O RR.
"	"	Newark, O., B&O RR.
"	"	Indianapolis, Ind., B&O RR.
"	"	Cincinnati, O., B&O RR.
"	"	Seymour, Ind., B&O RR.
"	"	Hamilton, O., B&O RR.
"	"	Indianapolis, Ind., NYC., Columbus, O., B& Cincinnati, O., B&
"	"	Auburn Jct., Ind., B&O RR.
"	"	La Paz Jct., Ind., B&O RR.
"	"	Terre Haute, Ind., CMStP&P RR., Seymour, Ind., B&O RR.
"	"	Crawfordsville, Ind., NYC RR., Columbus, O.
"	"	Colfax, Ind., NYC., Columbus, O., B&O RR.
"	"	Wheeling, W. Va., B&O RR.
Ill. Cent.	B&O RR.	Ill. Cent. RR., Edgewood, Ill., B&O RR.
"	"	Mattoon, Ill., B&O RR.
"	"	Odin, Ill., B&O RR.
"	"	Pana, Ill., B&O RR.
"	"	Sandoval, Ill., B&O RR.
"	"	Springfield, Ill., B&O RR.
"	"	Chicago, Ill., B&O RR.
"	"	Indianapolis, Ind., B&O RR.
"	"	Olney, Ill., B&O RR.
"	"	Lerna, Ill., NYC&StL., Holgate, O., B&O
Ill. Term.	B&O RR.	Ill. Term., Springfield, Ill., B&O RR.

Authority—Routing Provisions shown in B. T. Jones' ICC 3356—Section 3.

[fol. 727]

## EXHIBIT No. 32

Statement showing typical routes on Grain and Grain Products, carloads, from Peoria, Ill. to destinations on the Baltimore and Ohio Railroad of which University, D. C., Baltimore, Md., Aberdeen, Md. and Sykesville, Md. are representative.

Origin Road	Destination Road	Route
Penna. R. R.	B&O RR.	Penna. R.R., Bellaire, O., B&O RR.
"	"	Wheeling, W. Va., B&O RR.
"	"	Zanesville, O., B&O RR.
"	"	Decatur, Ill., B&O RR.
"	"	Akron, O., B&O RR.
"	"	Mansfield, O., B&O RR.
"	"	Columbus, O., B&O RR.
"	"	Newark, O., B&O RR.
"	"	Indianapolis, Ind., B&O RR.
"	"	Cincinnati, O., B&O RR.
"	"	Seymour, Ind., B&O RR.
"	"	Hamilton, O., B&O RR.
"	"	Auburn Jet., Ind., B&O RR.
"	"	La Paz Jet., Ind., B&O RR.
"	"	Indianapolis, Ind., NYC, Columbus, B&O.
"	"	Indianapolis, Ind., NYC., Cincinnati, B&O.
"	"	Terre Haute, Ind., CMStP&P, Seymour, Ind. B&O RR.
NYC RR	B&O RR	NYC RR., Columbus, O., B&O RR.
"	"	Ivorydale, O., B&O RR.
NYC&St.L.	B&O RR	NYC&St.L. RR., Cleveland, O., W&LE., Terminal Jet., O., B&O RR.
"	"	Bellevue, O., W&LE., Pittsburgh Jet., O., P&WVa Ry., Bruceton, Pa., B&O RR.
"	"	Bellevue, O., W&LE., Terminal Jet., O., B&O
"	"	Cleveland, O., W&LE., Pittsburgh Jet., O., P&WVa Ry., Bruceton, Pa., B&O RR.
"	"	Fostoria, O., B&O RR.
"	"	Bluffton, O., NO Ry., Spencer, O., W&LE Ry. Terminal Jet., O., B&O RR.
"	"	Bluffton, O., NO Ry., Copley, O., AC&Y Ry., Mogodore, O., W&LE., Terminal Jet., O., B&O
"	"	Fremont, O., W&LE Ry., Pittsburgh Jet., O., P&WVa., Bruceton, Pa., B&O RR.
"	"	Fremont, O., W&LE Ry., Terminal Jet., O., B&O

[fol. 728]

Origin Road	Destination Road	Route
NYC&StL	B. & O. R. R.	N.Y.C. & St.L.R.R., Delphos, O., N. O. Ry., Copley Jet., O., A. C. & Y. Ry., Mogadore, O., W. & L. E. Ry., Terminal Jet., O., B. & O. R. R.
"	"	" Delphos, O., N. O. Ry., Spencer, O., W. & L. E. Ry., Terminal Jet., O., B. & O. R. R.
"	"	" Bluffton, O., N. O. Ry., Copley Jet., O., A. C. & Y. Ry., Akron, O., B. & O. R. R.
"	"	" Delphos, O., N. O. Ry., Copley Jet., O., A. C. & Y. Ry., Akron, O., B. & O. R. R.
Alton R. R.	B. & O. R. R.	Alton R. R., Chicago, Ill., B. & O. R. R.
"	"	" Springfield, Ill., B. & O. R. R.
"	"	" Bloomington, Ill., B. & O. R. R.
"	"	" Ashland, Ill., B. & O. R. R.
"	"	" E. St. Louis, Ill., B. & O. R. R.
Ill. Cent. R.R.	B. & O. R. R.	Ill. Cent. R. R., Chicago, Ill., B. & O. R. R.
"	"	" Springfield, Ill., B. & O. R. R.
"	"	" Virginia City, Ill., B. & O. R. R.
"	"	" Decatur, Ill., B. & O. R. R.
Ill. Term'l R. R.	B. & O. R. R.	Ill. Term'l R. R., Springfield, Ill., B. & O. R. R.
"	"	" Decatur, Ill., B. & O. R. R.
CB&Q R. R.	B. & O. R. R.	C. B. & Q. R. R. Chicago, Ill., B. & O. R. R.
C. & I. M. Ry.	B. & O. R. R.	C. & I. M. Ry. Springfield, Ill., B. & O. R. R.
C. R. I. & P. Ry.	B. & O. R. R.	C. R. I. & P. Ry. Chicago, Ill., B. & O. R. R.
"	"	" Chicago, Ill., C. & E. I. R. R., Hills- dale, Ind., B. & O. R. R.
TP&W R. R.	B. & O. R. R.	T. P. & W. R. R. Forest, Ill., Wabash Ry., Defiance, O., B. & O. R. R.
C&NW Ry	B. & O. R. R.	C. & N. W. Ry. Chicago, Ill., B. & O. R. R.

Authority—Routing Provisions shown in B. T. Jones' ICC 3356—Section 3.

Statement showing mileages via typical working routes on Grain and Grain Products from Chicago, Peoria and Decatur, Ill. to University, D. C., Baltimore, Sykesville, and Aberdeen, Md., together with number of interchanges required via each route.

To	From	Miles via Shortest Working Route	Origin Road	Destin- ation Road	Miles via Working Route	Number of Interchanges via Working Route	Working Route
University, D. C.	Chicago, Ill.	772	B&O RR	B&O RR	772	None	B&O direct.
"	"	"	Erie	"	793	1	Erie R. R., Youngstown, O., B. & O.
"	"	"	P. R. R.	"	788	1	PRR., Wheeling, W. Va., B. & O.
"	"	"	Wab. R. R.	"	817	1	Wabash Ry., Toledo, O., B. & O.
"	"	"	NYC	"	817	1	NYC RR, Toledo, O., B. & O.
"	"	"	NYC&StL	"	773	1	NYC&StL R R, Fostoria, O., B&O.
University, D. C.	Decatur, Ill.	797	C&O Ry.	"	818	1	C&O Ry., Cincinnati, O., B&O.
"	"	"	B&O R R	B&O RR	797	None	B&O direct.
"	"	"	Wab. Ry.	"	854	1	Wabash Ry., Defiance, O. B&O
"	"	"	PRR	"	854	1	Pennsylvania R R., Wheeling, W. Va., B & O
University, D. C.	Peoria, Ill.	857	PRR	B&O RR	933	1	Pennsylvania R R, Wheeling, W. Va., B&O
"	"	"	NYC	"	857	1	NYC RR, Ivorydale, O., B & O
"	"	"	NYC&StL	"	903	1	NYC&StL R R, Fostoria, O. B. & O.
"	"	"	Alton	"	903	1	Alton R R, Springfield, Ill., B & O
"	"	"	Ill. Cent.	"	874	1	Ill. Cent. R. R., Decatur, Ill., B. & O.
Baltimore, Md.	Chicago, Ill.	797	B&O RR	B&O RR	797	None	B&O direct.
"	"	"	Erie	"	818	1	Erie R. R., Youngstown, O. B&O.
"	"	"	PRR	"	814	1	Penn. R. R., Wheeling, W. Va., B & O.
"	"	"	Wabash	"	843	1	Wabash Ry., Toledo, O., B & O.
"	"	"	NYC	"	843	1	NYC RR, Toledo, O., B & O.
"	"	"	NYC&StL	"	799	1	NYC&StL R R, Fostoria, O. B. & O.
"	"	"	C&O	"	844	1	C&O R. R., Cincinnati, B. & O.
Baltimore, Md.	Decatur, Ill.	823	B&O R R	B&O R R	823	None	B&O R R direct.
"	"	"	Wab.	"	880	1	Wab. Ry., Defiance, O., B & O.
"	"	"	PRR	"	880	1	Penn. R R., Wheeling, W. Va., B & O.
Baltimore, Md.	Peoria, Ill.	882	PRR	B&O R R	959	1	Penn. R. R., Wheeling, W. Va., B & O.
"	"	"	NYC	"	882	1	NYC R R., Ivorydale, O., B & O.
"	"	"	NYC&StL	"	929	1	NYC&StL R R., Fostoria, O., B & O.
"	"	"	Alton	"	929	1	Alton R. R., Springfield, Ill., B & O.
"	"	"	Ill. Cent.	"	900	1	Ill. Cent., Decatur, Ill., B & O.
Sykesville, Md.	Chicago, Ill.	769	B&O R R	B&O R R	769	None	B&O direct.
"	"	"	Erie	"	790	1	Erie R R., Youngstown, O., B & O.
"	"	"	PRR	"	785	1	P. R. R., Wheeling, W. Va., B & O.
"	"	"	Wab. Ry	"	814	1	Wab. Ry., Toledo, O., B & O.
"	"	"	NYC	"	814	1	NYC R R., Toledo, O., B & O.
"	"	"	NYC&StL	"	770	1	NYC&StLRy., Fostoria, O., B & O
"	"	"	C&O	"	815	1	C&O Ry., Cincinnati, O. B & O
Sykesville, Md.	Decatur, Ill.	794	B&O R R	B&O R R	794	None	B&O R R direct.
"	"	"	Wab.	"	851	1	Wab. Ry., Defiance, O., B & O
"	"	"	PRR	"	851	1	P. R. R., Wheeling, W. Va., B & O
Sykesville, Md.,	Peoria, Ill.	854	PRR	B&O R R	930	1	P. R. R., Wheeling, W. Va., B & O.
"	"	"	NYC	"	854	1	NYC R R, Ivorydale, O., B & O.
"	"	"	NYC&StL	"	900	1	NYC &StL, RR, Fostoria, O., B & O.
"	"	"	Alton	"	900	1	Alton R R, Springfield, Ill., B & O.
"	"	"	Ill. Cent.	"	871	1	Ill. Cent. R. R., Decatur, Ill., B & O.
Aberdeen, Md.,	Chicago, Ill.	830	B&O R R	B&O R R	830	None	B&O R R direct.
"	"	"	Erie	"	851	1	Erie R R, Youngstown, O. B & O.
"	"	"	P R R	"	847	1	P. R. R., Wheeling, W. Va. B & O.
"	"	"	Wab.	"	875	1	Wab. Ry., Toledo, O., B & O.
"	"	"	NYC	"	876	1	NYC R R, Toledo, O., B & O.
"	"	"	NYC&StL	"	832	1	NYC&StL RR, Fostoria, O., B & O.
"	"	"	C&O	"	877	1	C&O, Cincinnati, O., B & O.
Aberdeen, Md.,	Decatur, Ill.	855	B&O R R	B&O R R	855	None	B&O R R direct.
"	"	"	Wab. Ry.,	"	912	1	Wabash Ry., Defiance, O., B & O.
"	"	"	PRR	"	913	1	P R R., Wheeling, W. Va., B & O.
Aberdeen, Md.,	Peoria, Ill.	915	PRR	B&O R R	992	1	P R R., Wheeling, W. Va., B & O.
"	"	"	NYC	"	915	1	NYC RR., Ivorydale, O., B & O.
"	"	"	NYC&StL	"	961	1	NYC&StL RR, Fostoria, O., B & O.
"	"	"	Alton	"	961	1	Alton R R., Springfield, Ill., B & O.



## 395



# EXHIBIT No. 35

CHICAGO, ILL  
ORIGIN

N.Y.C.

TOLEDO, O.

N.Y.C.

YOUNGSTOWN, O.

## EXPLANATION

----- Normal route  
 - - - - Example of principle involved in complaint.

## NOTE

Under normal route B&O haul is 584 miles. Under routing sought by complaint (shown - - -) B&O haul is 74 miles. Reduction 510 miles equal to 87%. Under normal route there is one interchange between the N.Y.C. and B. & O. at Toledo. Under sought route there are three interchanges required, viz. - Youngstown, Connellsville and Hagerstown. The sought route injects two additional intermediate lines between the origin and delivering carriers, notwithstanding that these carriers have a direct interchange.

B. & O.

P. & L. E.

CONNELLSVILLE, PA.

B. & O.

A. & N.

CUMBERLAND, MD. B. & O.

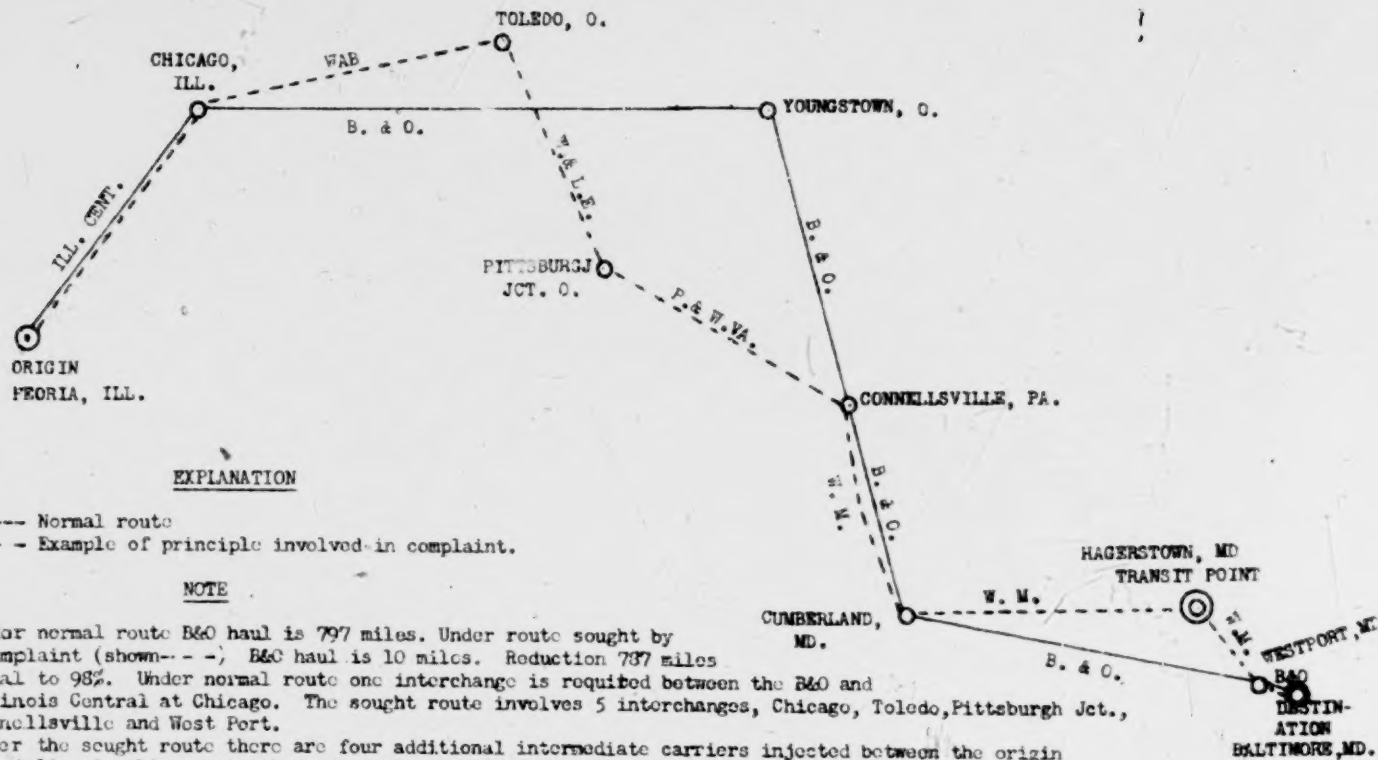
HAGERSTOWN, MD.  
TRANSIT POINT

WEVERTON, MD.

B. & O.

UNIVERSITY, D.C.  
DESTINATION

EXHIBIT No. 36



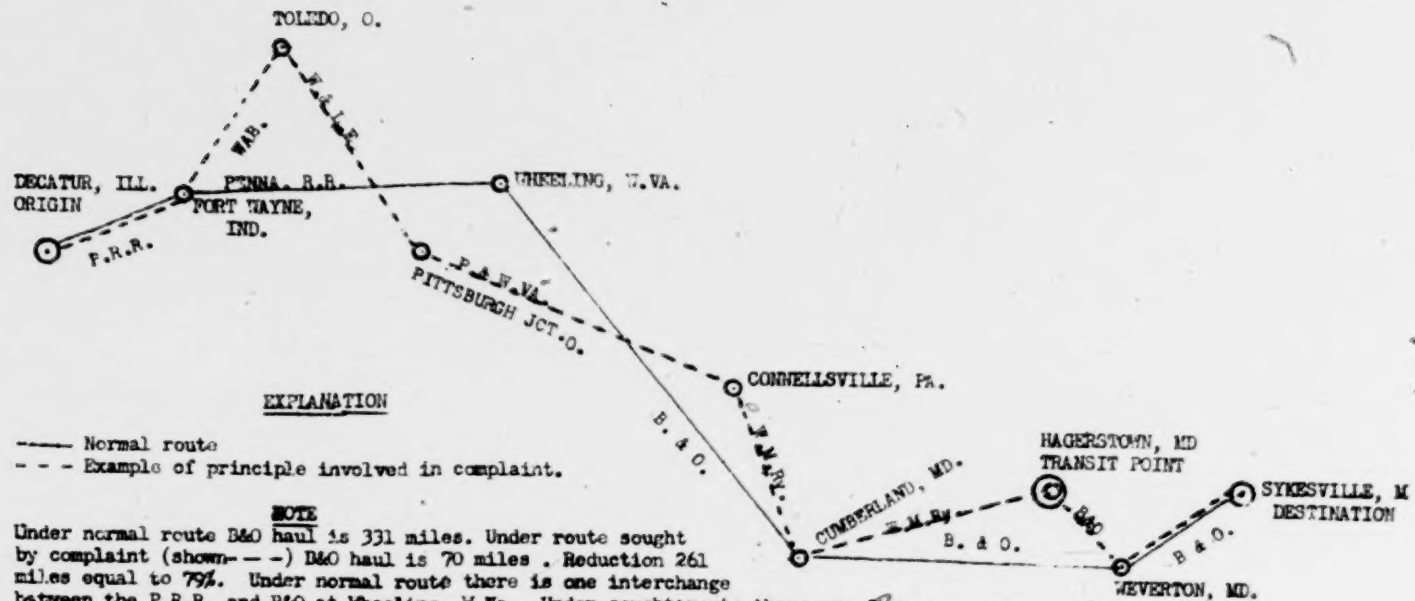
EXPLANATION

- Normal route
- - - - - Example of principle involved in complaint.

NOTE

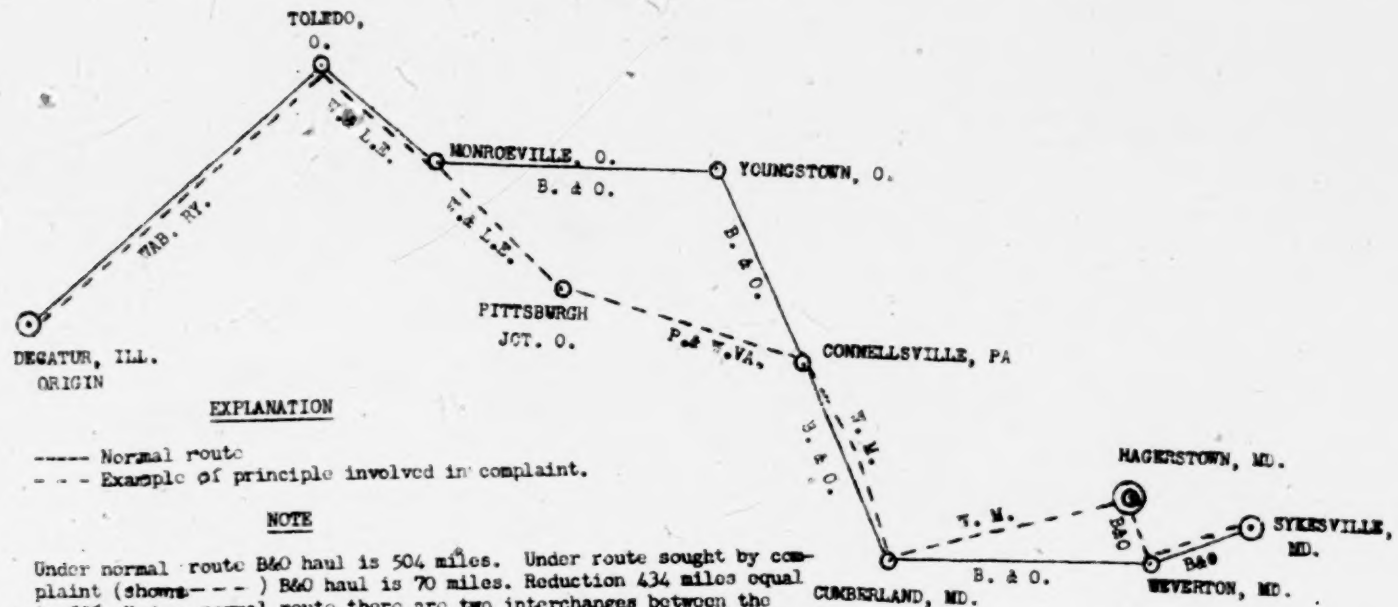
Under normal route B&O haul is 797 miles. Under route sought by complaint (shown- - -) B&O haul is 10 miles. Reduction 787 miles equal to 98%. Under normal route one interchange is required between the B&O and Illinois Central at Chicago. The sought route involves 5 interchanges, Chicago, Toledo, Pittsburgh Jct., Connellsville and West Port. Under the sought route there are four additional intermediate carriers injected between the origin and delivering line, notwithstanding that these carriers have a direct connection.

EXHIBIT No. 37



**NOTE**  
Under normal route B&O haul is 331 miles. Under route sought by complaint (shown - -) B&O haul is 70 miles. Reduction 261 miles equal to 79%. Under normal route there is one interchange between the P.R.R. and B&O at Wheeling, W.Va. Under sought route there are five interchanges required - Port Wayne, Toledo, Pittsburgh Jct., Connellsville and Hagerstown. The sought route injects four additional lines between origin and destination roads notwithstanding that these carriers have a direct interchange.

# EXHIBIT No. 38



## EXPLANATION

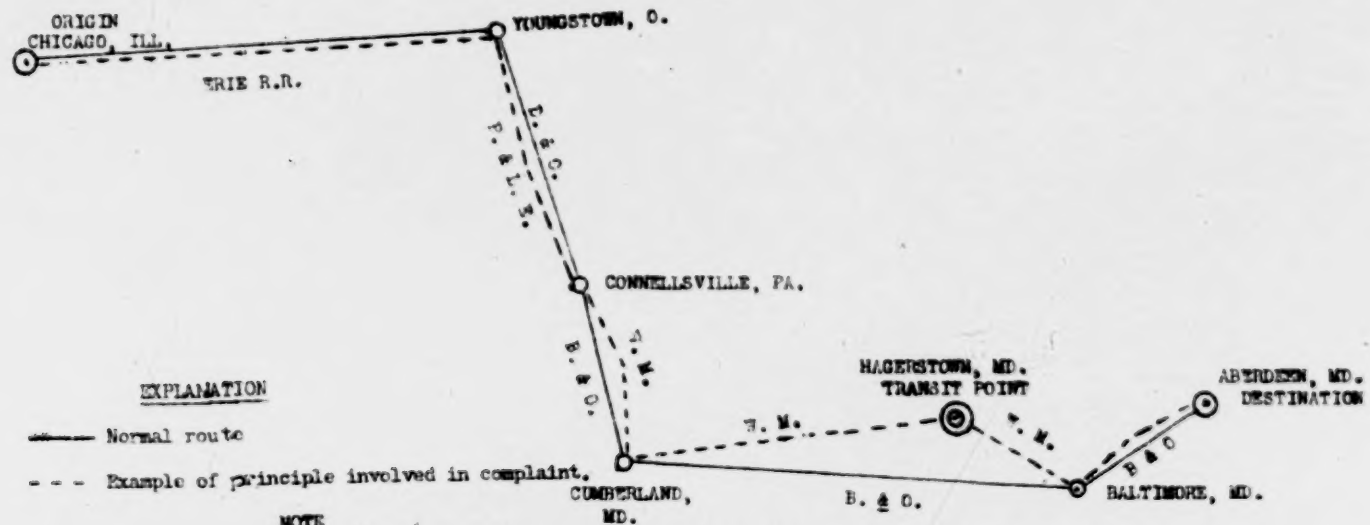
- Normal route
- ..... Example of principle involved in complaint.

## NOTE

Under normal route B&O haul is 504 miles. Under route sought by complaint (shown-----) B&O haul is 70 miles. Reduction 434 miles equal to 85%. Under normal route there are two interchanges between the Wabash and B&O - Toledo and Monroeville. Under sought route there are four interchanges required, Toledo, Pittsburgh Jct., Connellsville and Hagerstown. The sought route injects two additional intermediate lines.



EXHIBIT No. 39



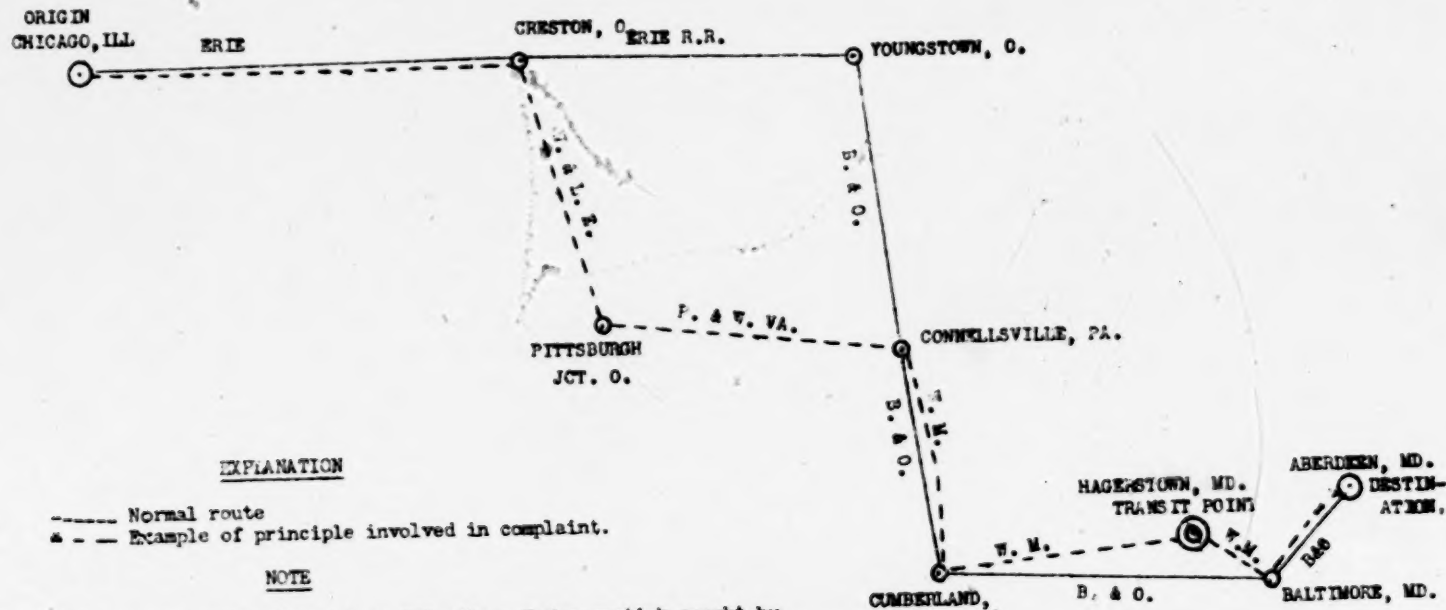
Under normal route B&O haul is 423 miles. Under routing sought by complaint (shown - - -) B&O haul is 35 miles. Reduction 388 miles equal to 92%.

Under normal route there is one interchange between the Erie and B&O at Youngstown.

Under sought route there are three interchanges required, viz.- Youngstown, Connellsville, Baltimore.

The sought route injects two additional intermediate lines between the origin and delivering carriers, notwithstanding that these carriers have a direct interchange.

# EXHIBIT No. 40



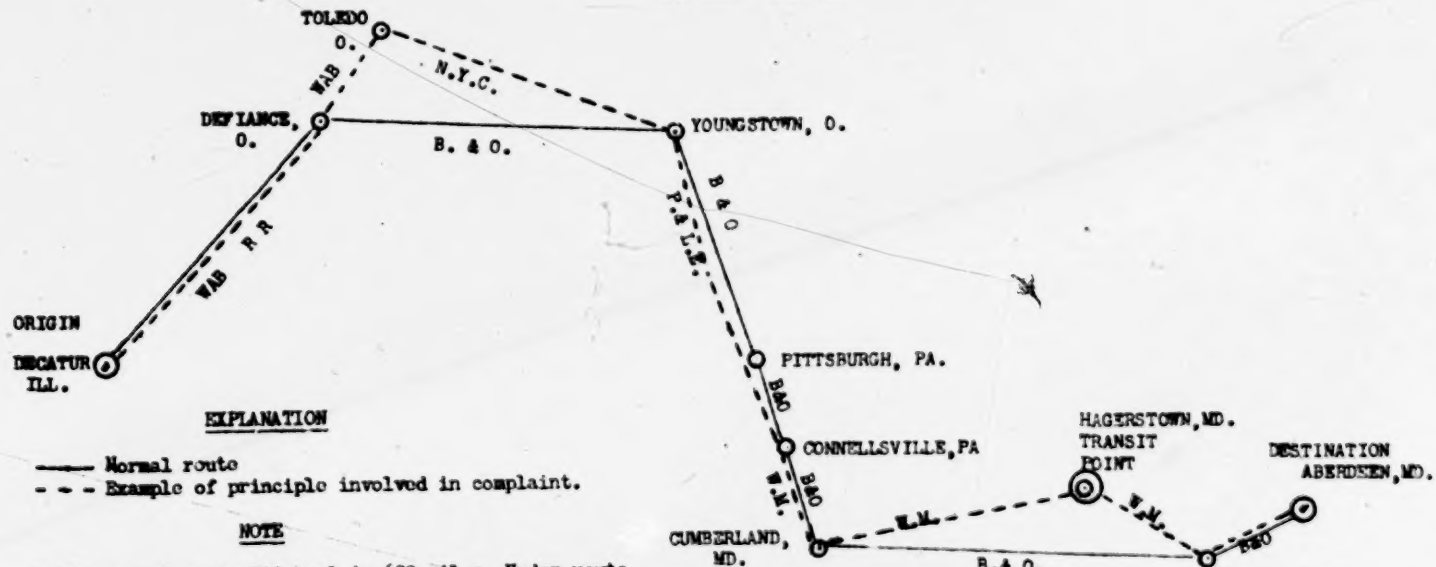
## EXPLANATION

- Normal route
- ..... Example of principle involved in complaint.

## NOTE

Under normal route B&O haul is 423 miles. Under routing sought by complaint (shown - - -) B&O haul is 35 miles. Reduction 388 miles equal to 92%. Under normal route there is one interchange between the Erie and B&O at Youngstown. Under sought route there are four interchanges required, viz., Creston, Pittsburgh Jct., Connellsville & Baltimore. The sought route injects three additional intermediate lines between the origin and delivering carriers, notwithstanding that these carriers have a direct interchange.

# EXHIBIT No. 41



## EXPLANATION

- Normal route
- - - Example of principle involved in complaint.

## NOTE

Under normal route B&O haul is 639 miles. Under route sought by complaint (shown - - -) B&O haul is 35 miles. Reduction 604 miles, equal to 95%. Under normal route there is one interchange between the Wabash and B&O at Defiance, O. Under sought route there are four interchanges required, Toledo, Youngstown, Connellsville and Baltimore. The sought route injects 3 additional intermediate lines between the originating and delivering lines, notwithstanding that these carriers have a direct interchange.

EXHIBIT No. 42

Explanation.

- Normal route.  
- - - Example of principle involved in complaint.

Via normal route an out of route (Harpers Ferry, W. Va. to Frederick, Md.) charge of  $3\frac{1}{2}$ ¢ per 100 lbs. (includes the transit charge of  $\frac{1}{2}$ ¢ per 100 lbs.) is assessed.  
(Item 380 B&O ICC 23273).

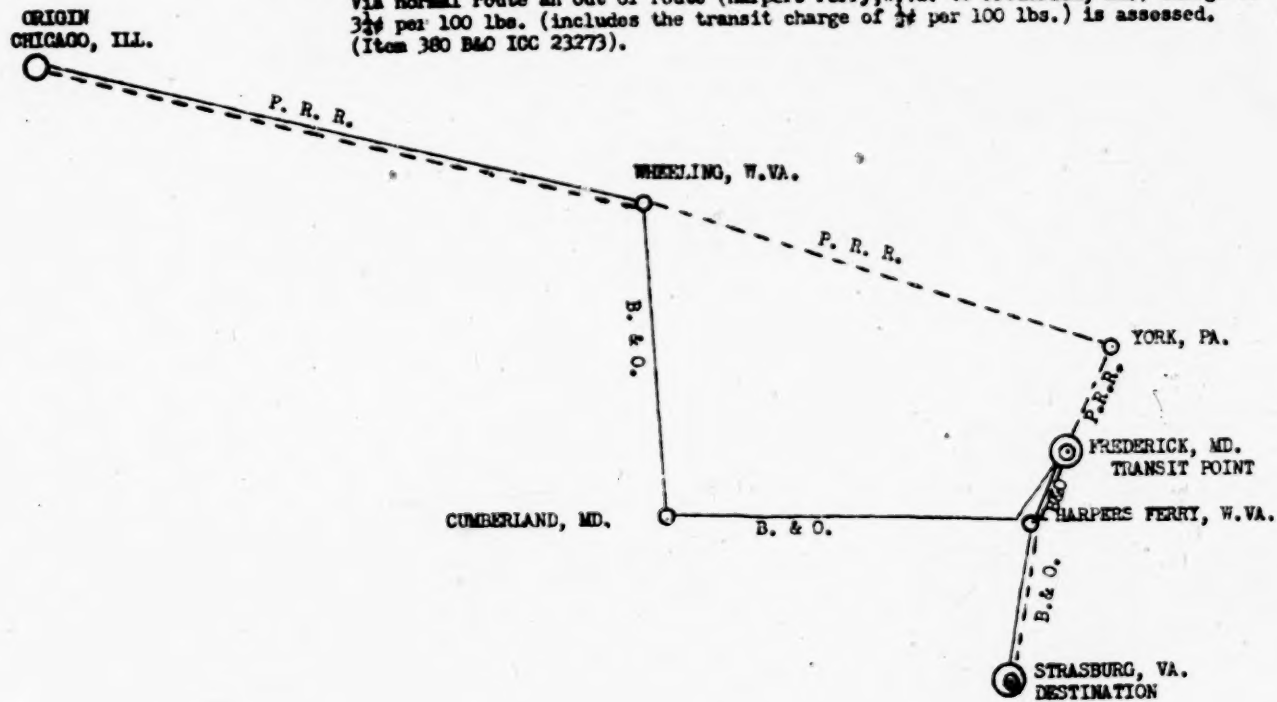


EXHIBIT No. 43

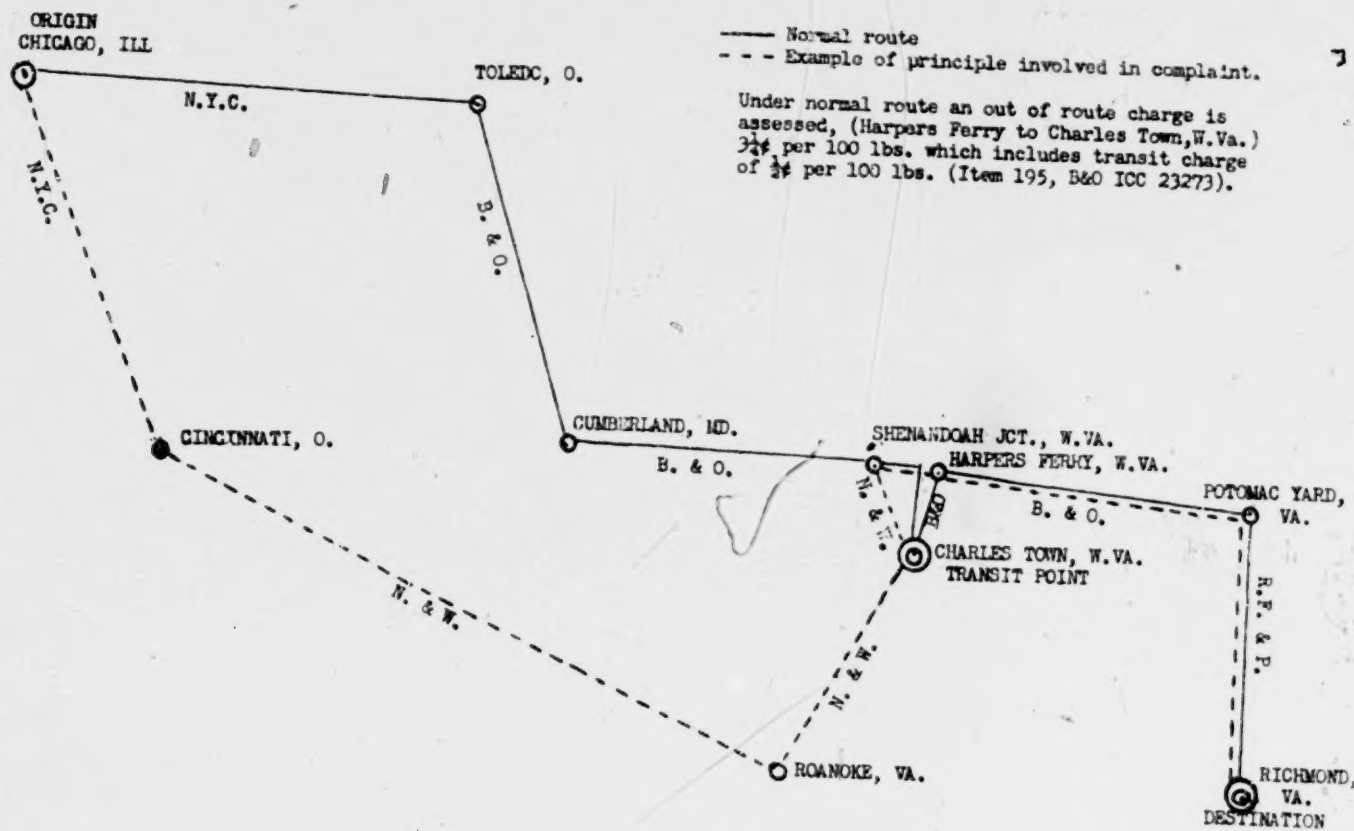


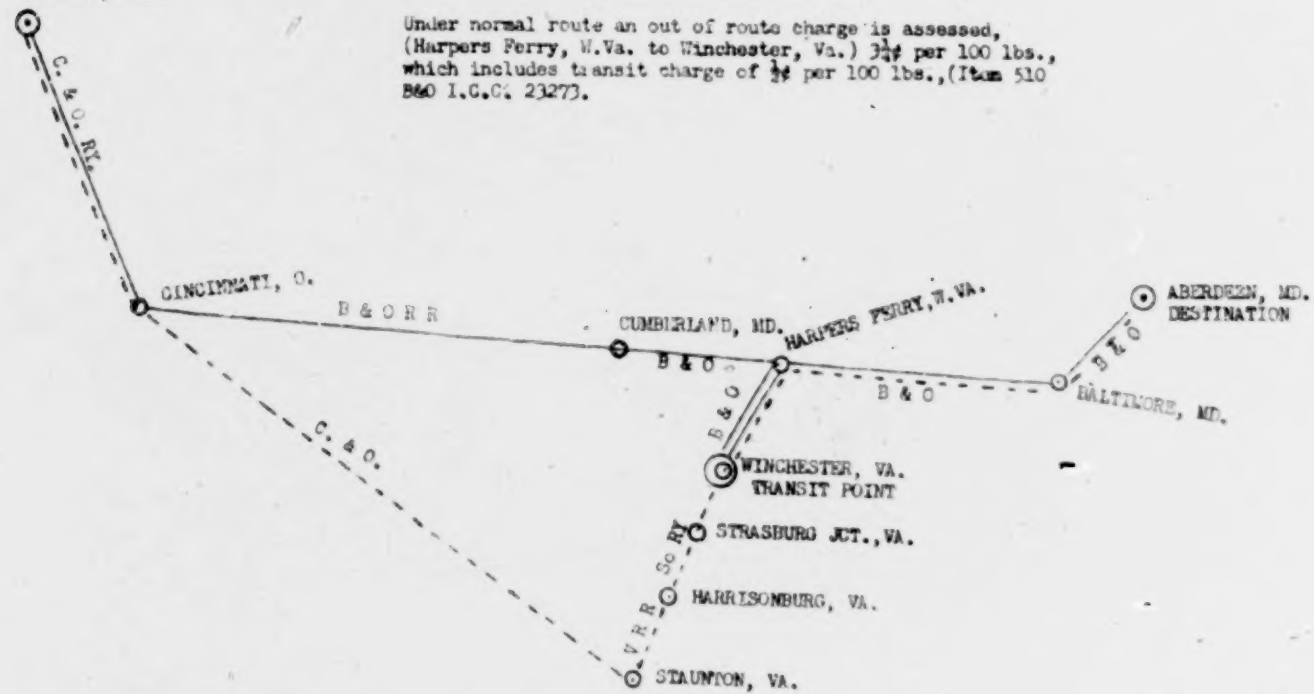


EXHIBIT No. 44

ORIGIN  
CHICAGO, ILL.

- Normal route  
- - - Example of principle involved in complaint.

Under normal route an out of route charge is assessed,  
(Harpers Ferry, W.Va. to Winchester, Va.)  $3\frac{1}{2}$ ¢ per 100 lbs.,  
which includes transit charge of  $\frac{1}{2}$ ¢ per 100 lbs., (Item 510  
B&O I.C.C. 23273).



[fol. 741]

## EXHIBIT No. 45

Historical Statement of Back Haul or Out of Route Charges Applying in Connection with Feed Mixing in Transit at Hagerstown, Md., from Representative Origin Territories to Typical Destinations; also Reproduction of Exhibits Nos. 1 and 2, I. C. C. Docket No. 18598.

			Transit and Back Haul or Out of Route Charge at Hagerstown, Md., when Destined to:					Comment	
			(For P. R. R. Delivery)						
			Freehold, N. J.	Downing- town, Pa.	New York, N. Y.	Aberdeen, Md.	Salisbury, Md.		
Effective Date	Tariff Reference	Origin Territory	(Published Charge as Shown Below includes Transit Charge of 1/2¢ per 100 Pounds; Balance is Back Haul or Out of Route Charge in Cents per 100 Pounds.)						
May	5, 1921	Sup. 7, PRR GO-ICC 11227	West of Pittsburgh	5.0	5.0	5.0	5.0	5.0	
			Pittsburgh Local	6.0	6.0	6.0	6.0	6.0	
			Buffalo Local	6.0	6.0	6.0	6.0	6.0	
			East of Pittsburgh	6.0	6.0	6.0	6.0	6.0	
January	3, 1922	PRR GO-ICC 12174	Pittsburgh Local	5.25	5.25	5.25	5.25	5.25	
			Buffalo Local	5.25	5.25	5.25	5.25	5.25	
			East of Pittsburgh	5.25	5.25	5.25	5.25	5.25	
July	1, 1922	Sup. 10, PRR GO-ICC 12174	West of Pittsburgh	4.5	4.5	4.5	4.5	4.5	10% Reduction,
			Pittsburgh Local	4.75	4.75	4.75	4.75	4.75	I. C. C. Docket No. 13293,
			Buffalo Local	4.75	4.75	4.75	4.75	4.75	68 I. C. C. 676
			East of Pittsburgh	4.75	4.75	4.75	4.75	4.75	
September 22, 1926	Sup. 25, PRR GO-ICC 13958	Buffalo Beyond (Ex Canada)	4.5	4.5	4.5	4.5	4.5		
June	25, 1927	PRR GO-ICC 14621	Pittsburgh Local	4.0	4.0	4.0	4.0	4.0	
			Buffalo Local	4.0	4.0	4.0	4.0	4.0	
			East of Pittsburgh	4.0	4.0	4.0	4.0	4.0	
August	25, 1927	Sup. 2, PRR GO-ICC 14621	Pittsburgh Local	4.5	4.5	4.5	4.5	4.5	
			Buffalo Local	4.5	4.5	4.5	4.5	4.5	
			East of Pittsburgh	4.5	4.5	4.5	4.5	4.5	
			Back Haul or Out of Route Charge in Cents per 100 Pounds at Hagerstown, Md., when Destined to:						
			(For P. R. R. Delivery)						
			Freehold, N. J.	Downing- town, Pa.	New York, N. Y.	Aberdeen, Md.	Salisbury, Md.		
			(Transit Charge of 1/2¢ per 100 Pounds is in Addition to Charges Shown Below.)						
May	1, 1930	Sup. 12, PRR GO-ICC 14558	West of Pittsburgh	4.0	4.0	4.0	4.0	4.0	
			Pittsburgh Local	4.0	4.0	4.0	4.0	4.0	
			Buffalo Local	4.0	4.0	4.0	4.0	4.0	
			Buffalo Beyond (Ex Canada)	4.0	4.0	4.0	4.0	4.0	
			East of Pittsburgh	4.0	4.0	4.0	4.0	4.0	
March	28, 1938	Sup. 21, PRR I. C. C. 1250	West of Pittsburgh	4.5	4.5	4.5	4.5	4.5	10% Increase,
			Pittsburgh Local	4.5	4.5	4.5	4.5	4.5	Ex Parte No. 123,
			Buffalo Local	4.5	4.5	4.5	4.5	4.5	226 I. C. C. 41
			Buffalo Beyond (Ex Canada)	4.5	4.5	4.5	4.5	4.5	
			East of Pittsburgh	4.5	4.5	4.5	4.5	4.5	
October	20, 1939	Sup. 12, PRR I. C. C. 2117						Absorption of W. Md. Ry. Switching Charge of \$6.93 Per Car both In- bound and Outbound Provided—To Expire with December 31, 1940.	

[fol. 742]

Historical Statement of Back Haul or Out of Route Charges Applying in Connection with Feed Mixing in Transit at Hagerstown, Md., from Representative Origin Territories to Typical Destinations; also Reproduction of Exhibits Nos. 1 and 2, I. C. C. Docket No. 18598.

Back Haul or Out of Route Charge in Cents per 100 Pounds at Hagerstown, Md., when Destined to:

(For P. R. R. Delivery)

Freehold, Downing- New York, Aberdeen, Salisbury,  
N. J. town, Pa. N. Y. Md. Md.

(Transit Charge of  $\frac{1}{2}$ c per 100 Pounds is in Addition to Charges Shown Below)

Effective Date      Tariff Reference  
November 22, 1940    Sup. 16, PRR I. C. C. 2117

Origin Territory

Comment

Expiration Date of December 31, 1940, in connection with Absorption of W. Md. Ry. Switching (both Inbound and Outbound) Eliminated.

September 10, 1941	PRR I. C. C. 2442	West of Pittsburgh	4.5	4.5	4.5	4.5	4.5
		Pittsburgh Local	4.5	4.5	4.5	4.5	4.5
		Buffalo Local	4.5	4.5	4.5	4.5	4.5
		Buffalo Beyond (Ex Canada)	4.5	4.5	4.5	4.5	4.5
		East of Pittsburgh	4.5	4.5	4.5	4.5	4.5

# REPRODUCTION OF :

Exhibit No. 1, I. C. C. Docket No. 18598

D. A. Stickell & Sons, Inc.      Exhibit No. 1  
I. C. C. Docket No. 18598      Witness    Daly  
D. A. Stickell & Sons, Inc.  
Hagerstown, Maryland

December 8th, 1920

Mr. E. S. Neilson,  
General Freight & Passenger Agent, P.R.R.,  
Chambersburg, Pa.

Dear Sir:

Referring the writers conversation with you several days ago, we hope that you are doing what you can to secure the milling in transit privilege for us here at Hagerstown. Just at this time nearly all of the local wheat is heavily saturated with Garlic and it is necessary for us to go West to buy some other wheat to blend it. As we advise you we are limited to points from which we can buy wheat on account of not being able to use your road. All that we want is a milling and mixing transit privilege at Hagerstown and not at our mill and we will attend to getting cars from your road and back to your road.

The writer will appreciate your effort to get this thru for us and we believe that after you have granted it to us that you will not regret it as it will certainly give you more business and there are times that all Railroads would like to have more business. We know this has not been the situation in the past but if railroading is like our business your day will probably come.

Thanking you in advance for anything you can do for us, we are  
Very respectfully,

D. A. Stickell & Sons,  
By Clarence M. Stickell

CMS/BC  
GTD-w  
CD-847 2-2-27

Exhibit No. 2, I. C. C. Docket No. 18598

D. A. Stickell & Sons, Inc.      Exhibit No. 2  
I. C. C. Docket No. 18598      Witness    Daly  
D. A. Stickell & Sons, Inc.  
Hagerstown, Maryland

December 11th, 1920

Mr. E. S. Neilson,  
Division Freight & Passenger Agent, P.R.R.,  
Chambersburg, Pa.  
Dear Sir:

Mr. Lowman was in our office this morning and advised us that it is agreeable to your road to allow milling and mixing in transit at Hagerstown on grain and grain products originating West of Harrisburg with final destination at points East of Harrisburg and the transit charge to be 5c when originating point is West of Pittsburgh and 6c when East of Pittsburgh. Also that we are to pay any switching charge that might be incurred at Hagerstown. These conditions are all agreeable to us with the exception that we do not feel the originating line should be limited to points West of Harrisburg. We think that all points on what was formerly known as the C. V. Ry. should be included in the originating points and that we should also be permitted to use these same points as final destination especially when the originating point is West of Harrisburg. In other words we would like to bring wheat from Ohio or Chicago and mill it here and be permitted to make final shipment to any point from Winchester to Harrisburg and all points East of Harrisburg and then any wheat that originates at any point between Winchester and Harrisburg, mill it here and send it to any point East of Harrisburg.

We trust that it will be agreeable to you to give us such privileges. We understand that the tariff in effect now at Chambersburg gives all these privileges so that a supplement to that tariff naming Hagerstown allowing the same privileges would be all that is necessary.

Thanking you for the attention you have given this and trusting that you will be able to have the above put in effect at an early date, we are

Very respectfully,  
D. A. Stickell & Sons  
By Clarence M. Stickell

CMS/BC  
GTD-w  
2-2-27

[fol. 743]

## EXHIBIT No. 46

Statement showing Origin and Destination Territory on and via The Pennsylvania Railroad Company (Territory East of Pittsburgh, Pa., and Erie, Pa.) in connection with Transit Arrangements en Feed in accordance with P.R.R. Tariff I.C.C. No. 2442 and Out-of-Route or Back Haul Charges where applicable at Hagerstown, Md., consisting of:

- |               |                     |   |  |
|---------------|---------------------|---|--|
| SECTION NO. 1 | (Page No. 1)        | — | Grouping of Origin Territory   |
| SECTION NO. 2 | (Page No. 2)        | — | Grouping of Destination Territory  |
| SECTION NO. 3 | (Page No. 3)        | — | Map outlining Origin and Destination Groups by Group Number Designation shown in Sections Nos. 1 and 2.  |
| SECTION NO. 4 | (Pages Nos. 4 to 6) | — | Statement of Territories from and to which Transit is available, together with Out-of-Route or Back Haul Charges where applicable at Hagerstown, Md. |

CD-824



## Page 1

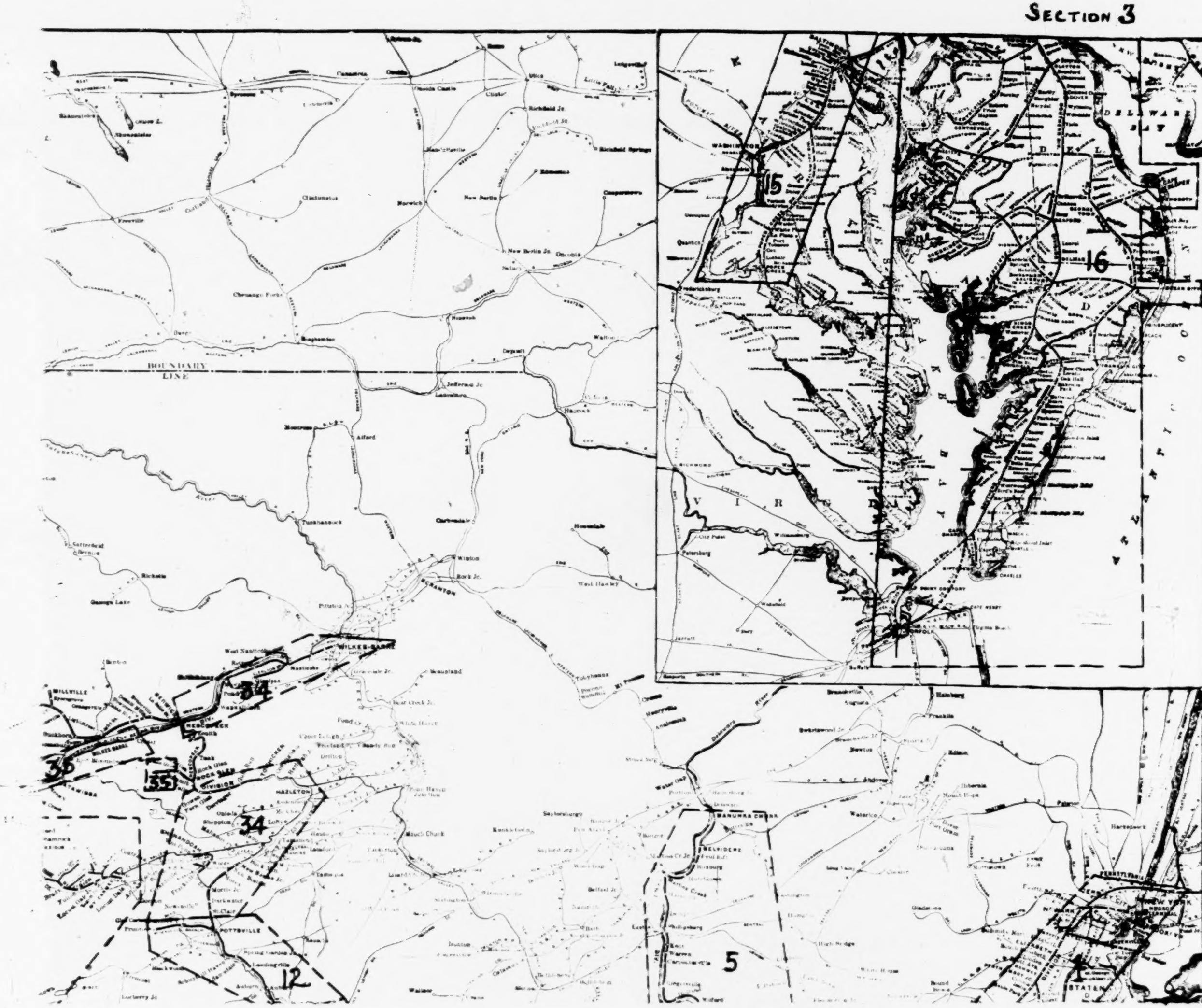
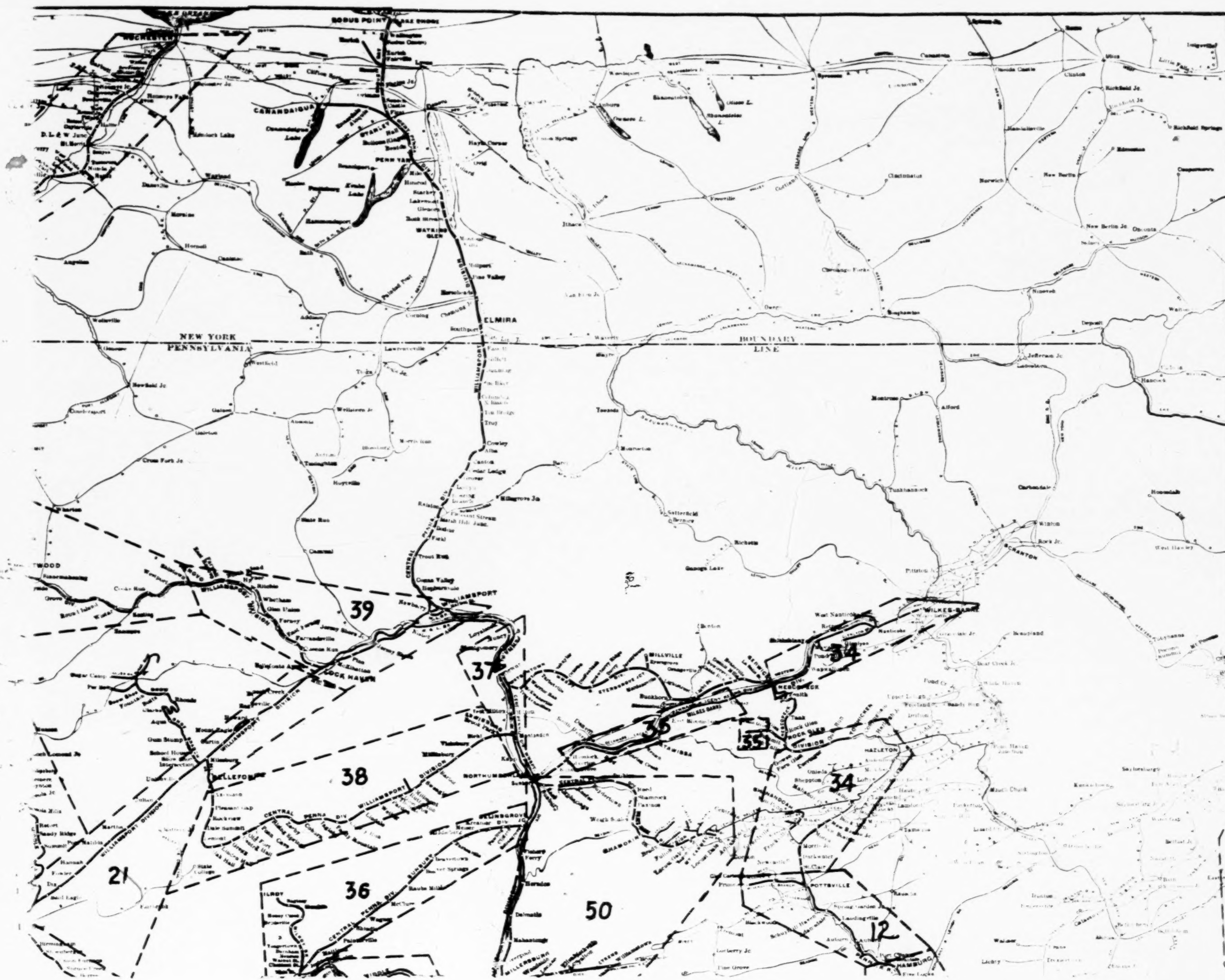
GROUP NO. 15			GROUP NO. 23			GROUP NO. 30			GROUP NO. 40			GROUP NO. 46		
7239 to 7398	Bay View, Baltimore, Md. to Potomac Yard, Va.		2907 to 2991	Bland Colliery No. 3 Pa. McGees, Pa.		4259 to 4352	Trotter, Pa. Fairchance, Pa.		5657 to 5842	Shintown, Pa. Daguscahonda, Pa.		5763 to 5778	Croyland, Pa. Lane's Mills, Pa.	
8004 to 8110	Baltimore (Bolton), Md. Woodberry, Baltimore, Md.		3061 to 3429	Penna. Colliery No. 7, Pa. Empire I, Pa.		4597 to 4589	Allenport, Pa. Millsboro, Pa.		6954 to 6994	DuBois, Pa. Mix Run, Pa.		6920 to 6951	Brookville, Pa. Falls Creek, Pa.	
7387 to 7388	Roslyn Connecting R. R. Va. Relee, Va. Rosslyn, Va.		GROUP NO. 24			GROUP NO. 31			GROUP NO. 41			GROUP NO. 47		
GROUP NO. 17			2994 to 3039	Superior Colliery No. 1, Pa. Williams Run Col- lieries No. 1 & 2, Pa.		4386 to 4503	Hays, Pa. Belle Vernon (Wash- ington Co.) Pa.		5748 to 5906	Ridgway, Pa. Johnsonburg, Pa. Warren, Pa.		8115 to 8278	Melvale, Md. Glen Rock, Pa.	
1754 to 1845	Marysville, Pa. Hawstone, Pa.		GROUP NO. 25			GROUP NO. 32			6304 to 6426	Allegany, N. Y. Struthers, Pa.		GROUP NO. 48		
GROUP NO. 18			3437 to 3494	Ebensburg, Pa. Josephine, Pa.		4649 to 4736	Livermore, Pa. Butier Jet., Pa.		GROUP NO. 42			8342 to 8409	Hanover, Pa. Frederick, Md.	
1852 to 1902	Granville, Pa. Warrior Ridge, Pa.		4603 to 4645	Strangford, Pa. Indiana, Pa.		4781 to 4846	Natrona, Pa. Millvale, Pa.		5910 to 5969	Irvineton, Pa. Waterford, Pa.		GROUP NO. 49		
GROUP NO. 19			GROUP NO. 26			4924 to 4984	Brilliant, Pa. Braeburn, Pa.		6428 to 6646	Dunn's Eddy, Pa. Angola, N. Y.		8281 to 8330	Larue, Pa. Menges Mills, Pa.	
1905 to 2076	Petersburg, Pa. Curry, Pa.		3526 to 3716	Cresson, Pa. Torrance, Pa.		GROUP NO. 33			GROUP NO. 43			8422 to 8467	Stony Brook, Pa. Goldsboro, Pa.	
2260 to 3503	Tyrone, Pa. Glen White Coal and Lumber Co., Pa.		GROUP NO. 27			4738 to 4774	Lane, Pa. Butler, Pa.		6003 to 6122	Sizerville, Pa. East Aurora, N. Y.		GROUP NO. 53		
3522 to 2125	Galitzin, Pa. East Freedom, Pa.		3718 to 3889	Gray, Pa. Biddle, Pa.		GROUP NO. 36			6175 to 6298	Cuba, N. Y. Rochester, N. Y.		1503 to 1518	Shiremanstown, Pa. Scotland, Pa.	
2192 to 2205	Cumberland, Md. Hamer's Mill, Pa.		3914 to 4041	Shafton, Pa. Irwin, Pa.		5302 to 5392	Selinsgrove, Pa. Lewistown, Pa.		GROUP NO. 44			GROUP NO. 54		
GROUP NO. 20			GROUP NO. 28			GROUP NO. 37			6125 to 6153	Jamison Road, N. Y. Louisiana St., N. Y.		1521 to 1565	Fayetteville, Pa. Winchester, Va.	
2209 to 2264	Stover, Pa. Vail, Pa.		4354 to 4382	Pittsburgh South Side, Pa. End Streets Run Branch, Pa.		5405 to 5420	Northumberland, Pa. Lewisburg, Pa.		6676 to 6688	Blasdell, N. Y. Buffalo Creek R. R. N. Y. Junction, N. Y.				
2356 to 2371	Mill Hall, Pa. Sandy Ridge, Pa.		4850 to 4922	Pittsburgh Joint Stock Yards, Pa. Butler Street, Pittsburgh, Pa.		5517 to 5543	Milton Transfer, Pa. Muncy, Pa.		GROUP NO. 45					
GROUP NO. 22			GROUP NO. 29			GROUP NO. 38			6705 to 6905	Schenley, Pa. Baxter, Pa.				
2371 to 2899	Belfast Colliery, Pa.		3898 to 3912	Hahntown, Pa. Gratztown, Pa.		5424 to 5516	Brook Park Pa. Axemann, Pa.							
			4081 to 4255	East Greensburg, Pa. Connellsville, Pa.		GROUP NO. 39								
						5556 to 5652	South Williamsport, Pa. Renovo, Pa.							



SECTION NO. 2  
Grouping of Destination Territory

GROUP NO. 1			GROUP NO. 4			GROUP NO. 8			GROUP NO. 13			GROUP NO. 34		
52	New York Lighter-	N. Y.	611	Englishtown,	N. J.	417	Laverock,	Pa.	1321	New Garden,	Pa.	5065	Nescopeck,	Pa.
to	age,		to			to			to			to		
244	New Brunswick	N. J.	637	Sea Girt,	N. J.	421	Sunnybrook,	Pa.	1329	Newark Center,	Del.	5138	Wilkes-Barre,	Pa.
BEDT # 5			804	Lumberton,	N. J.	1113	Narberth,	Pa.	7030	Darby,	Pa.	5174	Gowen,	Pa.
	Brooklyn and Long	N. Y.	to			to			to			to		
	Island City, Stas.,		813	Medford,	N. J.	1147	Frazer,	Pa.	7114	Stanton,	Del.	5292	St. Clair,	Pa.
Bush	Terminal R. R.		840	Smithville,	N. J.	1149	Morstein,	Pa.	7138	Newark,	Del.			
5	28th St. (Bay	N. Y.	to			to			7430	Garrett Road,	Pa.			
to	Ridge) Brooklyn,		858	Pemberton,	N. J.	1153	Green Hill,	Pa.	to					
25	63rd St. (Bay	N. Y.	Penna. & Atlantic R. R.			1165	Knickerbocker,	Pa.	7513	Oakbourne,	Pa.			
	Ridge) Brooklyn,		687	Columbus,	N. J.	to			7519	Wawa,	Pa.			
New York	Dock Ry.		to			1205	Langhorne,	Pa.	to					
5	Atlantic Terminal,	N. Y.	698	Juliestown,	N. J.	1621	Miquon,	Pa.	7544	Avondale,	Pa.			
to	Brooklyn,		863	South Pemberton,	N. J.	to			7600	Farnhurst,	Del.			
15	Fulton Terminal,	N. Y.	to			1657	Devault,	Pa.	to					
	Brooklyn,		877	Whitings,	N. J.	7516	West Chester,	Pa.	7611	Porter,	Del.			
GROUP NO. 2			GROUP NO. 5			GROUP NO. 9			GROUP NO. 14			GROUP NO. 47		
249	Voorhees,	N. J.	455	Wilburtha,	N. J.	1162	Glen Loch,	Pa.	7140	Iron Hill,	Md.	8115	Melvale,	Md.
to			to			1220	Whitford,	Pa.	to			to		
309	Edgely,	Pa.	565	Manunka Chunk,	N. J.	to			7237	Stemmer's Run,	Md.	8278	Glen Rock,	Pa.
441	Trenton,	N. J.				1318	Baker,	Pa.	7548	West Grove,	Pa.			
599	Dayton,	N. J.	GROUP NO. 6			1332	Parkersburg,	Pa.	to			GROUP NO. 48		
1209	Fallsington,	Pa.	716	Burlington,	N. J.	to			7589	Colora,	Md.	8342	Hanover,	Pa.
GROUP NO. 3			758	Camden,	N. J.	1481	Highspire,	Pa.	GROUP NO. 15			to		
312	Bristo,	Pa.	GROUP NO. 7			GROUP NO. 10			8409	Frederick,	Md.	8409	Frederick,	Md.
to			(Philadelphia, Pa., Stations)			1483	Steelton,	Pa.	GROUP NO. 49					
319	Cornwells Heights,	Pa.	425	St. Martins,	Pa.	to			8281	Larue,	Pa.			
569	South Amboy,	N. J.	to			1496	Rockville,	Pa.	to					
to			432	Engleside,	Pa.	8480	New Cumberland,	Pa.	8004	Baltimore (Bolton),	Md.	8330	Menges Mills,	Pa.
595	Jamesburg,	N. J.	1033	Vine St. & Pier 13,	Pa.	to			to			8422	Stony Brook,	Pa.
640	Prospect Plains,	N. J.	to			8494	West Fairview,	Pa.	8110	Woodberry, Baltimore, Md.		to		
to			1109	Overbrook,	Pa.	GROUP NO. 11			Rosslyn Connecting R. R.			8467	Goldsboro,	Pa.
681	Kinkora,	N. J.	1603	Wynnefield Avenue,	Pa.	1667	Spring City,	Pa.	7387	Relee,	Va.			
706	Roebbling,	N. J.	to			to			to			GROUP NO. 50		
711	Stevens	N. J.	1617	Cinnaminson,	Pa.	1724	Hamburg,	Pa.	7398	Rosslyn,	Va.	8504	Dauphin,	Pa.
778	Merchantville,	N. J.	7001	Broad & Washington	Pa.	GROUP NO. 12			GROUP NO. 16			to		
to			to			1726	Auburn,	Pa.	7124	Cooch,	Del.	8695	End Montelius Branch,	Pa.
803	Medford Junction,	N. J.	7028	Paschall,	Pa.	to			7136	Delaware City,	Del.			
817	Mount Holly,	N. J.	7404	31st & Chestnut	Pa.	1745	Lytle,	Pa.	7613	Kirkwood,	Del.	GROUP NO. 53		
			to			GROUP NO. 13			to			1503	Shiremanstown,	Pa.
			7426	End Cardington	Pa.	GROUP NO. 14			7982	Naval Operating	Va.	to		
			Branch,			GROUP NO. 15			Base (Hampton			1518	Scotland,	Pa.
						GROUP NO. 16			Roads),			GROUP NO. 54		
						GROUP NO. 17						1521	Fayetteville,	Pa.
						GROUP NO. 18						to		
						GROUP NO. 19						1565	Winchester,	Va.







## SECTION NO. 4

nt of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.  
(Charges in cents per 100 pounds)

[illegible]

[fol. 748]

## SECTION NO. 4 (Continued)

Statement of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.  
(Charges in cents per 100 pounds)

FROM:

Origin Territory Described Below and Points in Groups Nos.	TO:	Destinations in Groups Nos.																		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	34	35	47	48
Group No. 37.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 38.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 39.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 40.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 41.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 42.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 43.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 44.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 45.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 46.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 47.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	N	4½	4½
Group No. 48.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	7½	N	9
Group No. 49.....	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	4½	7½	9	N
Group No. 53.....	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	3¼	(13)	3¼	3¼
Group No. 54.....	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(19)	(6)	(6)

## Explanation of Reference Marks

N—No transit arrangement is in effect.

(6)—Out-of-route or back haul charge ½¢ per 100 pounds when originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating Md., to 1565 Winchester, Va.

(7)—Out-of-route or back haul charge ½¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., inclusive. No out-of-route or back haul charge to balar

(8)—Out-of-route or back haul charge 4½¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., and 2¼¢ per 100 pounds when destined to stations 1542 gansville, Md. No out-of-route or back haul charge when destined to stations 1547 Hagerstown, Md., to 1565 Winchester, Va., inclusive.

(9)—No out-of-route or back haul charge when originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., and destined to stations 1547 Hagerstown, Md., to 1565 Winchester stations 1547 to 1565 and destined to stations 1521 to 1546.

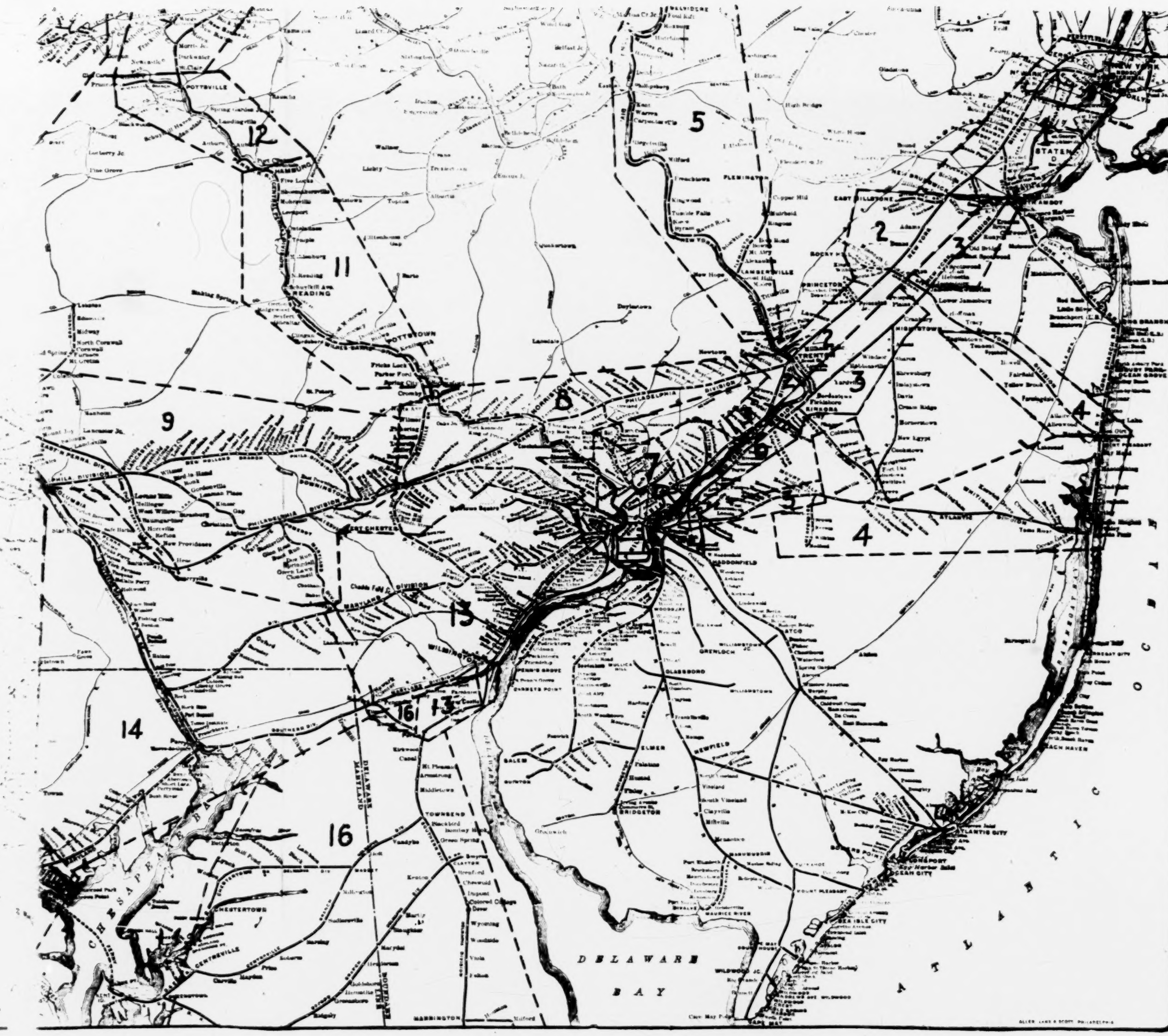
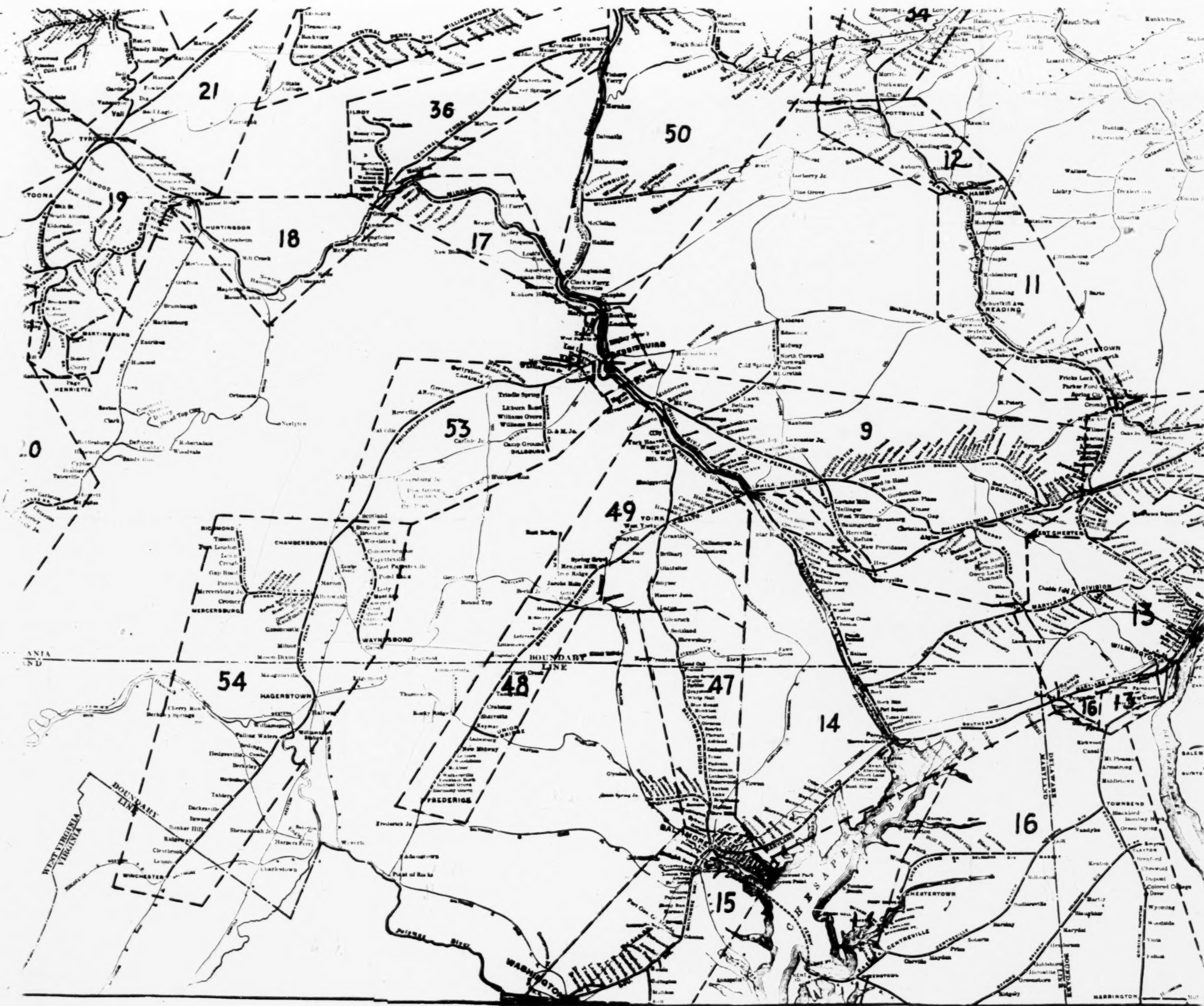
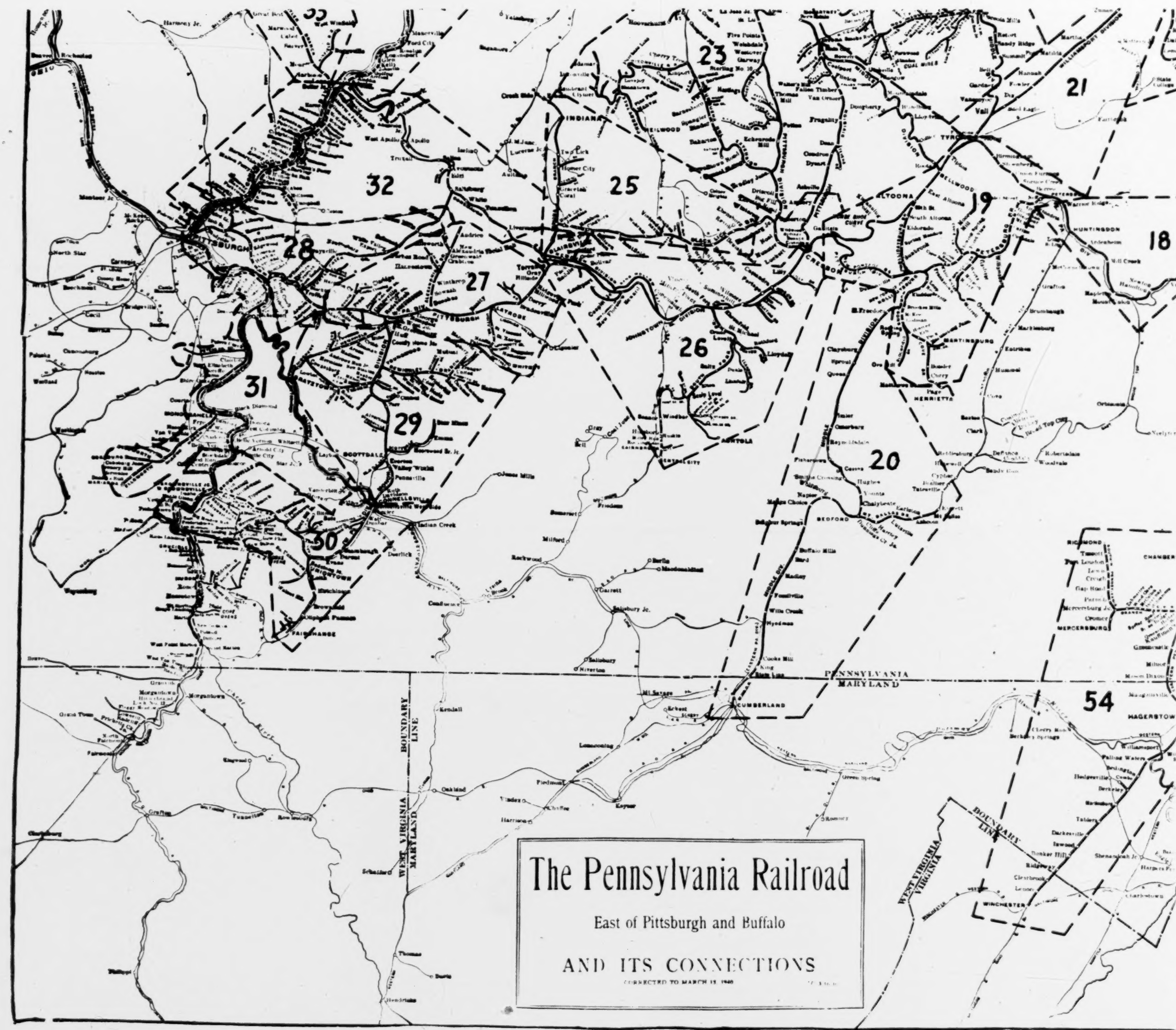
f Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.  
(Charges in cents per 100 pounds)

[illegible]

100 pounds when originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating at stations 1547 Hagerstown, or 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., inclusive. No out-of-route or back haul charge to balance of stations in Group No. 54. or 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., and 23¢ per 100 pounds when destined to stations 1542 Kauffman, Pa., to 1546 Maugansville, Md., or back haul charge when destined to stations 1547 Hagerstown, Md., to 1565 Winchester, Va., inclusive.

2 originating at stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md., and destined to stations 1547 Hagerstown, Md., to 1565 Winchester, Va., or when originating at stations 1521 to 1546.







## SECTION 4 (Continued)

Statement of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.

## Explanation of Reference Marks (Continued)

- (10)—Out-of-route or back haul charge 9¢ per 100 pounds when destined to stations 8504 Dauphin, Pa., to 8570 Mahantango, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 50.
- (11)—Out-of-route or back haul charge when destined to station 1488 Harrisburg, Pa., as representative of Group 10.
- (12)—Out-of-route or back haul charge of 9¢ per 100 pounds when destined to stations 1129 St. Davids, Pa., to 1147 Frazer, Pa., inclusive, and stations 1637 Betzwood to 1657 Devault, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 8.
- (13)—Out-of-route or back haul charge 7½¢ per 100 pounds when destined to stations 1503 Shiremanstown, Pa., to 1512 Carlisle, Pa., and 6¢ per 100 pounds when destined to stations 1513 Greason, Pa., to 1518 Scotland, Pa.
- (14)—From station 2333 Milesburg, Pa., to station 8532 Millersburg, Pa., as representative.
- (15)—Applicable only from stations 5377 Reedsville, Pa., to 5392 Lewistown, Pa., inclusive. No transit arrangement in effect from balance of stations in Group 36.
- (16)—Out-of-route or back haul charge applicable from station 5392 Lewistown, Pa., as representative of Group 36.
- (17)—Out-of-route or back haul charge applicable from station 1517 Shippensburg, Pa., to station 1503 Shiremanstown, Pa., as representative.
- (18)—Out-of-route or back haul charge 2¾¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when destined to balance of stations in Group 54.
- (19)—Out-of-route or back haul charge 4½¢ per 100 pounds when originating at stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., 2¾¢ per 100 pounds when originating at stations 1542 Kauffman, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating at stations 1547 Hagerstown, Md., to 1565 Winchester, Va.

## SECTION 4 (Continued)

Statement of Territories from and to which Transit is Available, together with Out-of-Route or Back Haul Charges where Applicable at Hagerstown, Md.

## Explanation of Reference Marks (Continued)

- (10)—Out-of-route or back haul charge 9¢ per 100 pounds when destined to stations 8504 Dauphin, Pa., to 8570 Mahantango, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 50.
- (11)—Out-of-route or back haul charge when destined to station 1488 Harrisburg, Pa., as representative of Group 10.
- (12)—Out-of-route or back haul charge of 9¢ per 100 pounds when destined to stations 1129 St. Davids, Pa., to 1147 Frazer, Pa., inclusive, and stations 1637 Betzwood to 1657 Devault, Pa., inclusive. No transit arrangement in effect to balance of stations in Group 8.
- (13)—Out-of-route or back haul charge 7½¢ per 100 pounds when destined to stations 1503 Shiremanstown, Pa., to 1512 Carlisle, Pa., and 6¢ per 100 pounds when destined to stations 1513 Greason, Pa., to 1518 Scotland, Pa.
- (14)—From station 2333 Milesburg, Pa., to station 8532 Millersburg, Pa., as representative.
- (15)—Applicable only from stations 5377 Reedsville, Pa., to 5392 Lewistown, Pa., inclusive. No transit arrangement in effect from balance of stations in Group 36.
- (16)—Out-of-route or back haul charge applicable from station 5392 Lewistown, Pa., as representative of Group 36.
- (17)—Out-of-route or back haul charge applicable from station 1517 Shippensburg, Pa., to station 1503 Shiremanstown, Pa., as representative.
- (18)—Out-of-route or back haul charge 2¾¢ per 100 pounds when destined to stations 1521 Fayetteville, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when destined to balance of stations in Group 54.
- (19)—Out-of-route or back haul charge 4½¢ per 100 pounds when originating at stations 1521 Fayetteville, Pa., to 1541 Richmond, Pa., 2¾¢ per 100 pounds when originating at stations 1542 Kauffman, Pa., to 1546 Maugansville, Md. No out-of-route or back haul charge when originating at stations 1547 Hagerstown, Md., to 1565 Winchester, Va.

CLERK'S COPY

Vol. II

RECORD OF DECISIONS

Supreme Court of the United States

NOTICE OF DECISION

No. 182

THE PENNSYLVANIA RAILROAD COMPANY, THE  
ATCHAFALYA, TOPEKA AND SANTA FE RAILWAY  
COMPANY, THE BALTIMORE AND OHIO RAIL-  
ROAD COMPANY, ET AL, APPELLANTS,

THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, D. & STICKELL &  
SONS, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND

FILED JUNE 11, 1941

{

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 182

THE PENNSYLVANIA RAILROAD COMPANY, THE  
ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY, THE BALTIMORE AND OHIO RAIL-  
ROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, D. A. STICKELL &  
SONS, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND

## VOL. II

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Exhibit in evidence—Proceedings before the Interstate  
Commerce Commission in Docket No. 28647—Con-  
tinued

#### Exhibits—Continued

	Original	Print
Exhibit No. "51"—Statement showing out of route or back haul charges application in connection with grain, carloads, made into feed, etc. . . . .	750	418
Exhibit No. "48"—Diagrams illustrating present P. R. R. routes vs. theoretical routes to establish transit point on direct line; also mileages . . . . .	763	431
Exhibit No. "49"—Statement showing P. R. R. haul from representative C. F. A. grain origin points to representative local destinations, etc.	764	432
Exhibit No. "50"—Statement showing out of route or back haul charges applicable in connec- tion with grain, carloads, made into feed, etc. . .	765	433

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 3, 1944.



[fol. 750]

## EXHIBIT No. 51

Statement Showing Out of Route or Back Haul Charges Applicable in Connection with Grain, Carloads, Made into Feed, Under Applicable Milling and Mixing in Transit Tariffs, at Hagerstown, Md., Contrasted with Similar Charges at Other Feed Mixing Points on the Pennsylvania Railroad When Originating at Chicago, Ill., and Destined Representative Eastern Points on the Pennsylvania Railroad; also Mileage and Comparative Data.

CD-804

[fol. 751]

Sheet # 2.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT BEDFORD, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Bed- ford, Pa.	P. R. R. Miles Bed- ford, Pa., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Bed- ford, Pa.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Bed- ford, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	630	353	983	910	73	8.02%	3.0
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	630	321	951	878	73	8.31	3.0
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	630	316	946	873	73	8.36	3.0
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	630	271	901	828	73	8.82	3.0
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	630	303	933	860	73	8.49	3.0
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	630	233	863	790	73	9.24	3.0
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	630	273	903	830	73	8.80	3.0
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	630	233	863	790	73	9.24	3.0
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	630	244	874	801	73	9.11	3.0
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	630	317	947	874	73	8.35	3.0
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	630	343	973	900	73	8.11	3.0
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	630	345	975	902	73	8.09	3.0
Exmore, Va.....	791	326	1,117	968	149	15.39	4.5	630	411	1,041	968	73	7.54	3.0
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	630	385	1,015	942	73	7.75	3.0
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	630	301	931	858	73	8.51	3.0
TOTAL.....		3,368	15,223	13,004	2,229				4,649	14,099	13,004			
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	630	309.9	939.9	866.9	73	8.42%	3.0
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2442

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-2

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT CUMBERLAND, MD.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Cumber- land, Md.	P. R. R. Miles Cumber- land, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Cumber- land, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess Mileage Via Cumber- land, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	667	390	1,057	910	147	16.15%	4.5
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	667	358	1,025	878	147	16.74	4.5
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	667	353	1,020	873	147	16.84	4.5
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	667	308	975	828	147	17.75	4.5
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	667	340	1,007	860	147	17.09	4.5
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	667	270	937	790	147	18.61	4.5
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	667	310	977	830	147	17.71	4.5
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	667	270	937	790	147	18.61	4.5
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	667	281	948	801	147	18.35	4.5
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	667	354	1,021	874	147	16.82	4.5
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	667	380	1,047	900	147	16.33	4.5
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	667	382	1,049	902	147	16.30	4.5
Exmore, Va.....	791	326	1,117	968	149	15.39	4.5	667	448	1,115	968	147	15.19	4.5
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	667	422	1,089	942	147	15.61	4.5
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	667	338	1,005	858	147	17.13	4.5
TOTAL.....		3,368	15,223	13,004	2,229				5,204	15,209	13,004			
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	667	346.9	1,013.9	866.9	147	16.96%	4.5
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-3

[fol. 753]

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT DILLSBURG, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Dills- burg, Pa.	P. R. R. Miles Dills- burg, Pa., to Desti- nation	P. R. R. Miles Chicago, Ill., to Destina- tion Via Dills- burg, Pa.	P. R. R. Miles Chicago, Ill., to Desti- nation	Excess P. R. R. Mileage Via Dills- burg, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	734	211	945	910	35	3.85%	4.5
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	734	179	913	878	35	3.99	4.5
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	734	174	908	873	35	4.01	4.5
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	734	129	863	828	35	4.23	4.5
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	734	161	895	860	35	4.07	4.5
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	734	91	825	790	35	4.43	4.5
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	734	131	865	830	35	4.22	4.5
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	734	90	824	790	34	4.30	4.5
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	734	99	833	801	32	4.00	4.5
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	734	172	906	874	32	3.66	4.5
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	734	201	935	900	35	3.89	4.5
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	734	203	937	902	35	3.88	4.5
Exmore, Va.....	791	326	1,117	968	149	15.39	4.5	734	269	1,003	968	35	3.62	4.5
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	734	243	977	942	35	3.72	4.5
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	734	159	893	858	35	4.08	4.5
TOTAL.....		3,368	15,223	13,004	2,229				2,512	13,522	13,004	518		4.5
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	734	167.5	901.5	866.9	34.5	3.98%	P. R. R. I. C. C. 2220

P. R. R.  
I. C. C.  
2442

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-4

[fol. 754]

Sheet # 5.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT ELIZABETHVILLE, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Eliza- beth- ville, Pa.	P. R. R. Miles Eliza- beth- ville, Pa., to Desti- nation	P. R. R. Miles Chicago, Ill., to Destina- tion Via Eliza- beth- ville, Pa.	P. R. R. Miles Chicago, Ill., to Desti- nation	Excess P. R. R. Mileage Via Eliza- beth- ville, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y. ....	791	268	1,059	910	149	16.37%	4.5	731	227	958	910	48	5.27%	2.75
Freehold, N. J. ....	791	236	1,027	878	149	16.97	4.5	731	195	926	878	48	5.47	2.75
Whitings, N. J. ....	791	231	1,022	873	149	17.07	4.5	731	190	921	873	48	5.50	2.75
Philadelphia, Pa. ....	791	186	977	828	149	18.00	4.5	731	145	876	828	48	5.80	2.75
Lambertville, N. J. ....	791	218	1,009	860	149	17.33	4.5	731	177	908	860	48	5.58	2.75
Downingtown, Pa. ....	791	148	939	790	149	18.86	4.5	731	107	838	790	48	6.08	2.75
Birdsboro, Pa. ....	791	188	979	830	149	17.95	4.5	731	147	878	830	48	5.78	4.00
Havre de Grace, Md. ....	791	148	939	790	149	18.86	4.5	731	107	838	790	48	6.08	2.75
Baltimore, Md. ....	791	156	947	801	146	18.23	4.5	731	119	850	801	49	6.12	2.75
Pope's Creek, Md. ....	791	229	1,020	874	146	16.70	4.5	731	192	923	874	49	5.61	2.75
Dagsboro, Del. ....	791	258	1,049	900	149	16.56	4.5	731	217	948	900	48	5.33	2.75
Salisbury, Md. ....	791	260	1,051	902	149	16.52	4.5	731	219	950	902	48	5.32	2.75
Exmore, Va. ....	791	326	1,117	968	149	15.39	4.5	731	285	1,016	968	48	4.96	2.75
Franklin City, Va. ....	791	300	1,091	942	149	15.82	4.5	731	259	990	942	48	5.10	2.75
Chestertown, Md. ....	791	216	1,007	858	149	17.37	4.5	731	175	906	858	48	5.59	2.75
TOTAL .....	...	3,368	15,233	13,004	2,229	...	...	...	2,761	13,726	13,004	722	...	42.50
AVERAGE .....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	731	184.1	915.1	866.9	48.1	5.55%	2.83
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-5



[fol. 755]

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT FREDERICK, MD.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Fred- erick, Md.	P. R. R. Miles Fred- erick, Md., to Desti- nation	P. R. R. Miles Chicago, Ill., to Destina- tion Via Fred- erick, Md.	P. R. R. Miles Chicago, Ill., to Desti- nation	Excess P. R. R. Mileage Via Fred- erick, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	799	239	1,038	910	128	14.07%	3.25
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	799	207	1,006	878	128	14.58	3.25
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	799	202	1,001	873	128	14.66	3.25
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	799	157	956	828	128	15.46	3.25
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	799	189	988	860	128	14.88	3.25
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	799	119	918	790	128	16.21	3.25
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	799	159	958	830	128	15.42	3.25
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	799	114	913	790	123	15.57	3.25
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	799	112	911	801	110	13.73	3.25
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	799	185	984	874	110	12.59	3.25
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	799	227	1,026	900	126	14.00	3.25
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	799	229	1,028	902	126	13.97	3.25
Exmore, Va.....	791	326	1,117	968	149	15.59	4.5	799	295	1,094	968	126	13.02	3.25
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	799	269	1,068	942	126	13.38	3.25
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	799	185	984	858	126	14.69	3.25
TOTAL.....	...	3,368	15,223	13,004	2,229	...	...	799	2,888	14,873	13,004	1,869	...	...
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	799	192.5	991.5	866.9	124.6	14.37%	3.25
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-6

[fol. 756]

Sheet #7.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT GREENCASTLE, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Green- castle, Pa.	P. R. R. Miles Green- castle, Pa., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Green- castle, Pa.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Green- castle, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	780	257	1,037	910	127	13.96%	4.5
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	780	225	1,005	878	127	14.46	4.5
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	780	220	1,000	873	127	14.55	4.5
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	780	175	955	828	127	15.34	4.5
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	780	207	987	860	127	14.77	4.5
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	780	137	917	790	127	16.08	4.5
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	780	177	957	830	127	15.30	4.5
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	780	137	917	790	127	16.08	4.5
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	780	145	925	801	124	15.48	4.5
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	780	218	998	874	124	14.19	4.5
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	780	247	1,027	900	127	14.11	4.5
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	780	249	1,029	902	127	14.08	4.5
Exmore, Va.....	791	326	1,117	968	159	15.39	4.5	780	315	1,095	968	127	13.12	4.5
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	780	289	1,069	942	127	13.48	4.5
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	780	205	985	858	127	14.80	4.5
TOTAL.....	...	3,368	15,223	13,004	2,229	...	...	...	3,203	14,903	13,004	1,899	...	...
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	780	213.5	993.5	866.9	126.6	14.60%	4.5
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-7

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT LITTLESTOWN, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Littles- town, Pa.	P. R. R. Miles Littles- town, Pa., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Littles- town, Pa.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Littles- town, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	769	209	978	910	68	7.47%	6.0
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	769	177	946	878	68	7.74	6.0
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	769	172	941	873	68	7.79	6.0
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	769	127	896	828	68	8.21	6.0
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	769	159	928	860	68	7.91	6.0
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	769	89	858	790	68	8.61	6.0
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	...	...	...	...	...	...	(L)
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	...	...	...	...	...	...	(L)
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	769	82	851	801	50	6.24	4.5
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	769	155	924	874	50	5.72	4.5
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	769	197	966	900	66	7.33	6.0
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	769	199	968	902	66	7.32	6.0
Exmore, Va.....	791	326	1,117	968	149	15.39	4.5	769	265	1,034	968	66	6.82	6.0
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	769	239	1,008	942	66	7.01	6.0
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	769	155	924	858	66	7.69	6.0
TOTAL.....	...	3,368	15,233	13,004	2,229	...	...	...	2,225	12,222	11,384	838	...	75.0
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	769	171.2	940.2	875.7	64.5	7.37%	5.77
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

(L)—No transit arrangement in effect. Local rates apply.

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

[fol. 758]

Sheet # 9.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT NORFOLK, VA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Norfolk, Va.	P. R. R. Miles Nor- folk, Va., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Norfolk, Va.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Nor- folk, Va.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.	791	268	1,059	910	149	16.37%	4.5	1,027	354	1,381	910	471	51.76%	10.5
Freehold, N. J.	791	236	1,027	878	149	16.97	4.5	1,027	322	1,349	878	471	53.64	10.5
Whittings, N. J.	791	231	1,022	873	149	17.07	4.5	1,027	309	1,336	873	463	53.04	10.5
Philadelphia, Pa.	791	186	977	828	149	18.00	4.5	1,027	258	1,285	828	457	55.19	10.5
Lambertville, N. J.	791	218	1,009	860	149	17.33	4.5	1,027	304	1,331	860	471	54.77	10.5
Downingtown, Pa.	791	148	939	790	149	18.86	4.5	.....	.....	.....	.....	.....	.....	(L)
Birdsboro, Pa.	791	188	979	830	149	17.95	4.5	.....	.....	.....	.....	.....	.....	(L)
Havre de Grace, Md.	791	148	939	790	149	18.86	4.5	.....	.....	.....	.....	.....	.....	(L)
Baltimore, Md.	791	156	947	801	146	18.23	4.5	.....	.....	.....	.....	.....	.....	(L)
Pope's Creek, Md.	791	229	1,020	874	146	16.70	4.5	.....	.....	.....	.....	.....	.....	(L)
Dagsboro, Del.	791	258	1,049	900	149	16.56	4.5	1,027	201	1,228	900	328	36.44	4.5
Salisbury, Md.	791	260	1,051	902	149	16.52	4.5	1,027	125	1,152	902	250	27.72	4.5
Exmore, Va.	791	326	1,117	968	149	15.39	4.5	1,027	59	1,086	968	118	12.19	4.5
Franklin City, Va.	791	300	1,091	942	149	15.82	4.5	1,027	243	1,270	942	328	34.82	4.5
Chester town, Md.	791	216	1,007	858	149	17.37	4.5	1,027	229	1,256	858	398	46.39	9.0
TOTAL	.....	3,368	15,223	13,004	2,229	.....	.....	.....	2,404	12,674	8,919	3,755	.....	79.6
AVERAGE	791	224.5	1,015.5	866.9	148.6	17.14	4.5	1,027	240.4	1,267.4	891.9	375.5	42.10	7.95
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220 and 2442

(L)—No transit arrangement in effect. Local rates apply.  
Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-9

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT READING, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Reading, Pa.	P. R. R. Miles Read- ing, Pa., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Reading, Pa.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Read- ing, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	823	141	964	910	54	5.93%	0.
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	823	109	932	878	54	6.15	0.
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	823	109	932	873	59	6.76	0.
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	823	64	887	828	59	7.13	0.
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	823	91	914	860	54	6.28	0.
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	823	50	873	790	83	10.51	6.0
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	823	10	833	830	3	0.36	0.
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	823	109	932	790	142	17.97	9.0
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	823	146	969	801	168	20.97	3.25
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	823	219	1,042	874	168	19.22	3.25
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	823	179	1,002	900	102	11.33	3.25
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	823	181	1,004	902	102	11.31	3.25
Exmore, Va.....	791	326	1,117	968	149	15.39	4.5	823	247	1,070	968	102	10.54	3.25
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	823	221	1,044	942	102	10.83	3.25
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	823	137	960	858	102	11.89	3.25
TOTAL.....	.....	3,368	15,233	13,004	2,229	.....	.....	.....	2,013	14,358	13,004	1,354	.....	37.75
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	823	134.2	957.2	866.9	90.3	6.02%	2.52
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2442

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-10



[fol. 760]

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT REEDSVILLE, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Desti- nation	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Reeds- ville, Pa.	P. R. R. Miles Reeds- ville, Pa., to Desti- nation	P. R. R. Miles Chicago, Ill., to Destina- tion Via Reeds- ville, Pa.	P. R. R. Miles Chicago, Ill., to Desti- nation	Excess P. R. R. Mileage Via Reeds- ville, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.	791	268	1,059	910	149	16.37%	4.5	661	259	920	910	10	1.16%	2.75
Freehold, N. J.	791	236	1,027	878	149	16.97	4.5	661	227	888	878	10	1.14	2.75
Whitings, N. J.	791	231	1,022	873	149	17.07	4.5	661	222	883	873	10	1.15	2.75
Philadelphia, Pa.	791	186	977	828	149	18.00	4.5	661	177	838	828	10	1.21	2.75
Lambertville, N. J.	791	218	1,009	860	149	17.33	4.5	661	209	870	860	10	1.16	2.75
Downingtown, Pa.	791	148	939	790	149	18.86	4.5	661	139	800	790	10	1.27	2.75
Birdsboro, Pa.	791	188	979	830	149	17.95	4.5	661	179	840	830	10	1.20	2.75
Havre de Grace, Md.	791	148	939	790	149	18.86	4.5	661	139	800	790	10	1.27	2.75
Baltimore, Md.	791	156	947	801	146	18.23	4.5	661	150	811	801	10	1.25	2.75
Pope's Creek, Md.	791	229	1,020	874	146	16.70	4.5	661	223	884	874	10	1.14	2.75
Dagsboro, Del.	791	258	1,049	900	149	16.56	4.5	661	249	910	900	10	1.11	2.75
Salisbury, Md.	791	260	1,051	902	149	16.52	4.5	661	251	912	902	10	1.11	2.75
Exmore, Va.	791	326	1,117	968	149	15.39	4.5	661	317	978	968	10	1.03	2.75
Franklin City, Va.	791	300	1,091	942	149	15.82	4.5	661	291	952	942	10	1.06	2.75
Chestertown, Md.	791	216	1,007	858	149	17.37	4.5	661	207	868	858	10	1.17	2.75
TOTAL		3,368	15,233	13,004	2,229				3,239	13,154	13,004			
AVERAGE	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	661	215.9	876.9	866.9	10	1.15%	2.75
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-11

[fol. 761]

Sheet # 12.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT SCHUYLER, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Schuy- ler, Pa.	P. R. R. Miles Schuy- ler, Pa., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Schuy- ler, Pa.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Schuy- ler, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.	791	268	1,059	910	149	16.37%	4.5	711	271	982	910	72	7.91%	6.0
Freehold, N. J.	791	236	1,027	878	149	16.97	4.5	711	239	950	878	72	8.20	6.0
Whitings, N. J.	791	231	1,022	873	149	17.07	4.5	711	234	945	873	72	8.25	6.0
Philadelphia, Pa.	791	186	977	828	149	18.00	4.5	711	189	900	828	72	8.70	6.0
Lambertville, N. J.	791	218	1,009	860	149	17.33	4.5	711	221	932	860	72	8.37	6.0
Downingtown, Pa.	791	148	939	790	149	18.86	4.5	711	151	862	790	72	9.11	6.0
Birdsboro, Pa.	791	188	979	830	149	17.95	4.5	711	152	863	830	33	0.40	6.0
Havre de Grace, Md.	791	148	939	790	149	18.86	4.5	711	151	862	790	72	9.11	6.0
Baltimore, Md.	791	156	947	801	146	18.23	4.5	711	163	874	801	73	9.11	6.0
Pope's Creek, Md.	791	229	1,020	874	146	16.70	4.5	711	236	947	874	73	8.35	6.0
Dagsboro, Del.	791	258	1,049	900	149	16.56	4.5	711	261	972	900	72	8.00	6.0
Salisbury, Md.	791	260	1,051	902	149	16.52	4.5	711	263	974	902	72	7.98	6.0
Exmore, Va.	791	326	1,117	968	149	15.39	4.5	711	329	1,040	968	72	7.44	6.0
Franklin City, Va.	791	300	1,091	942	149	15.82	4.5	711	303	1,014	942	72	7.64	6.0
Chestertown, Md.	791	216	1,007	858	149	17.37	4.5	711	219	930	858	72	8.39	6.0
TOTAL	...	3,368	15,223	13,004	2,229	...	...	...	3,382	14,047	13,004	1,043	...	...
AVERAGE	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	711	225.5	936.5	866.9	69.5	8.02%	6.0
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-12

{fol. 762}

Sheet # 13.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT SO. DANVILLE, PA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to So. Dan- ville, Pa.	P. R. R. Miles So. Dan- ville, Pa., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via So. Dan- ville, Pa.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via So. Dan- ville, Pa.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
New York, N. Y.....	791	268	1,059	910	149	16.37%	4.5	718	246	964	910	54	5.93%	4.5
Freehold, N. J.....	791	236	1,027	878	149	16.97	4.5	718	214	932	878	54	6.15	4.5
Whitings, N. J.....	791	231	1,022	873	149	17.07	4.5	718	214	932	873	59	6.76	4.5
Philadelphia, Pa.....	791	186	977	828	149	18.00	4.5	718	169	887	828	59	7.13	4.5
Lambertville, N. J.....	791	218	1,009	860	149	17.33	4.5	718	196	914	860	54	6.28	4.5
Downingtown, Pa.....	791	148	939	790	149	18.86	4.5	718	138	856	790	66	8.35	4.5
Birdsboro, Pa.....	791	188	979	830	149	17.95	4.5	718	115	833	830	3	0.36	4.5
Havre de Grace, Md.....	791	148	939	790	149	18.86	4.5	718	138	856	790	66	8.35	6.0
Baltimore, Md.....	791	156	947	801	146	18.23	4.5	718	150	868	801	67	8.36	6.0
Pope's Creek, Md.....	791	229	1,020	874	146	16.70	4.5	718	223	941	874	67	7.67	6.0
Dagsboro, Del.....	791	258	1,049	900	149	16.56	4.5	718	248	966	900	66	7.33	6.0
Salisbury, Md.....	791	260	1,051	902	149	16.52	4.5	718	250	968	902	66	7.32	6.0
Exmore, Va.....	791	326	1,117	968	149	15.39	4.5	718	316	1,034	968	66	6.82	6.0
Franklin City, Va.....	791	300	1,091	942	149	15.82	4.5	718	290	1,008	942	66	7.01	6.0
Chestertown, Md.....	791	216	1,007	858	149	17.37	4.5	718	206	924	858	66	7.69	6.0
TOTAL.....		3,368	15,233	13,004	2,229				3,113	13,883	13,004	879		79.5
AVERAGE.....	791	224.5	1,015.5	866.9	148.6	17.14%	4.5	718	207.5	925.5	866.9	58.6	6.76%	5.30
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

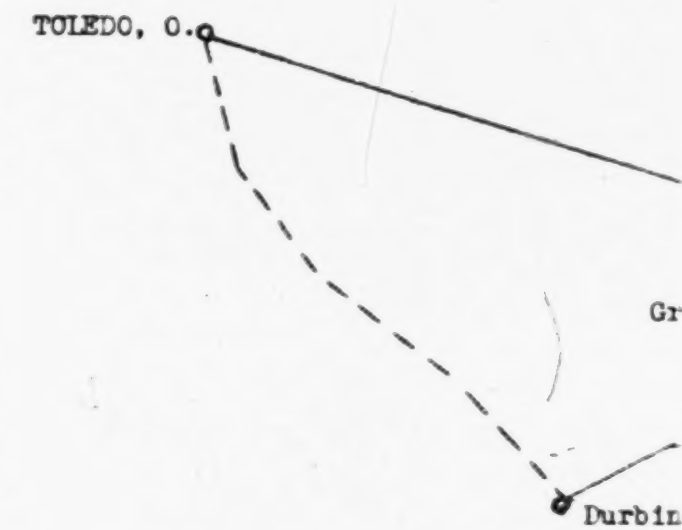
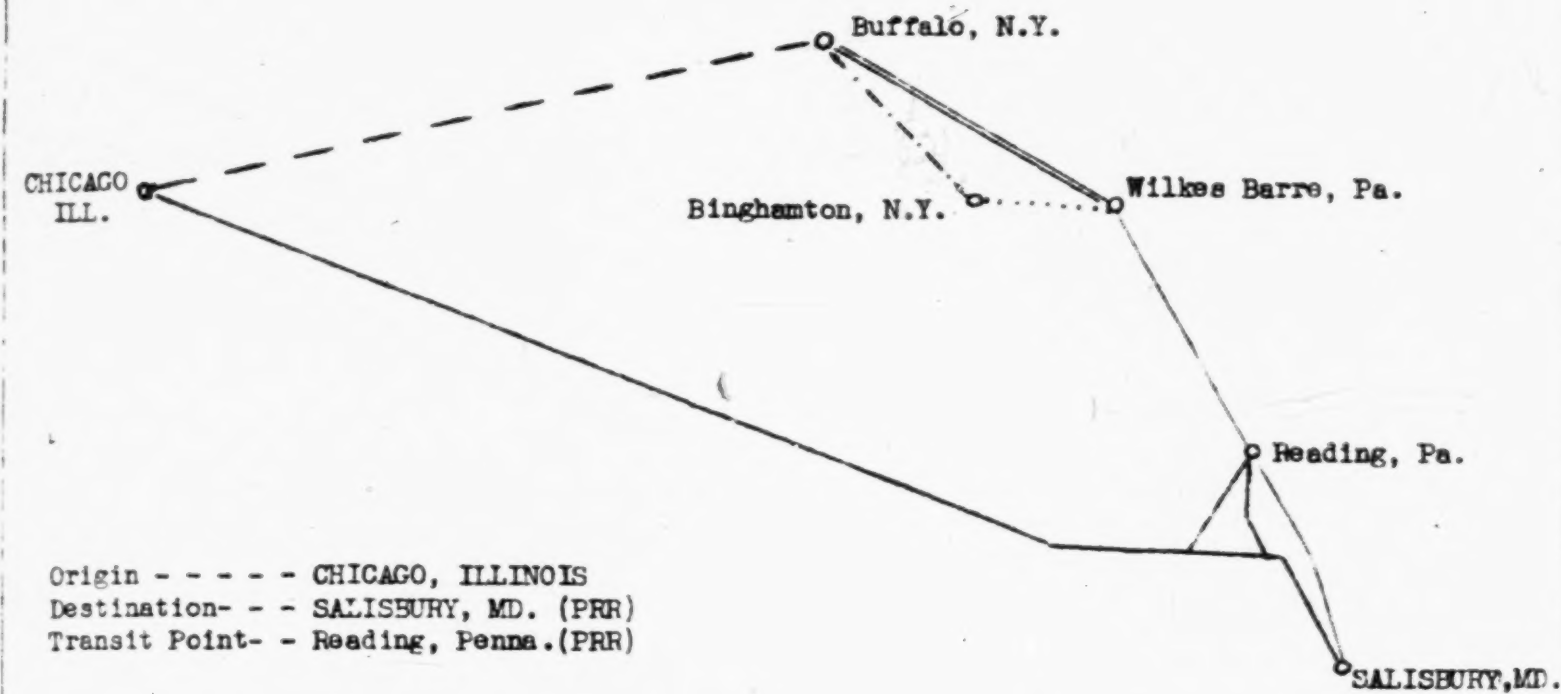
Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-804-13

(Here follows 1 photolithograph, side folio 763)



DIAGRAMS ILLUSTRATING PRESENT P.R.R. ROUTES VS. THEORETICAL ROUTES  
TO ESTABLISH TRANSIT POINT ON DIRECT LINE; ALSO MILEAGES



( ——— )	PRESENT ROUTE	Miles
Pennsylvania Railroad:		
	Chicago, Illinois to Reading, Pa.....	823
	Reading, Pa. to Salisbury, Md.....	181
	Total.....	1004
	Chicago, Illinois to Salisbury, Md.....	902
	OUT OF ROUTE - - - - -	102

ROUTES TO ESTABLISH READING, PA. INTERMEDIATE

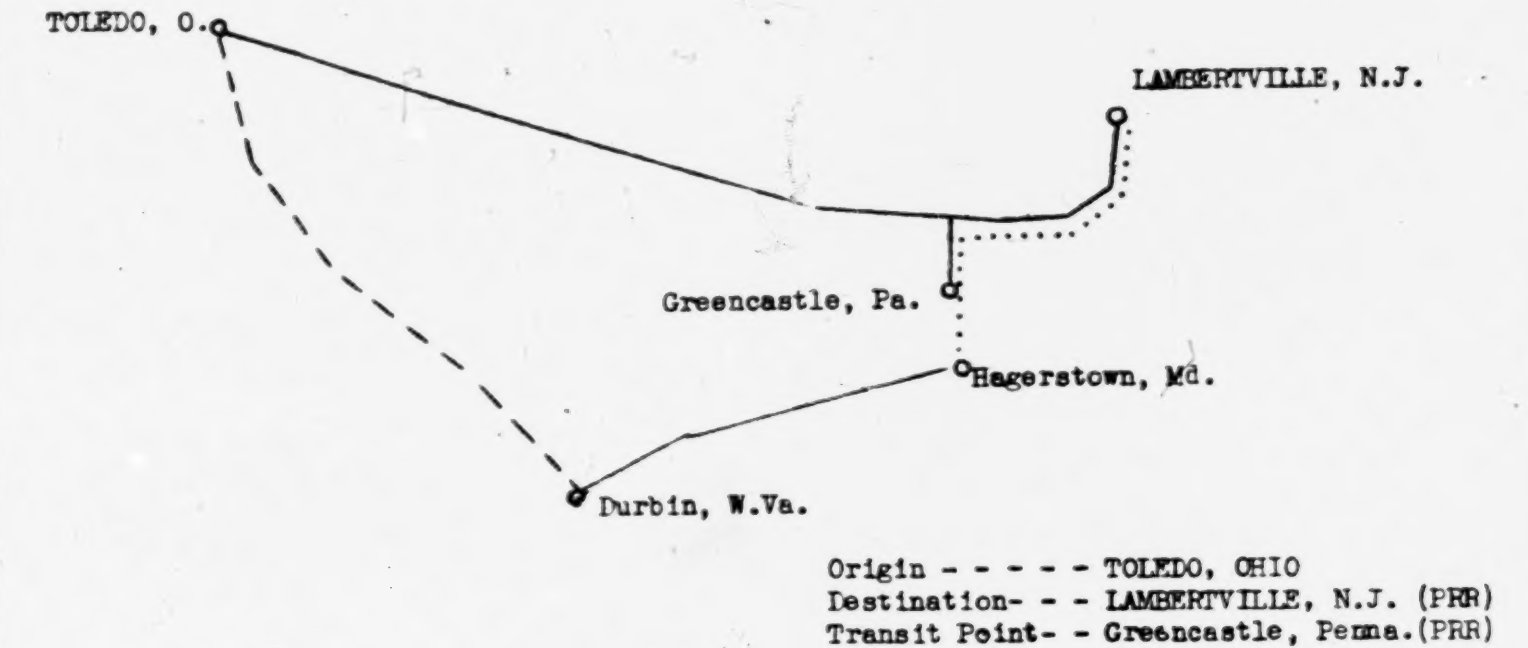
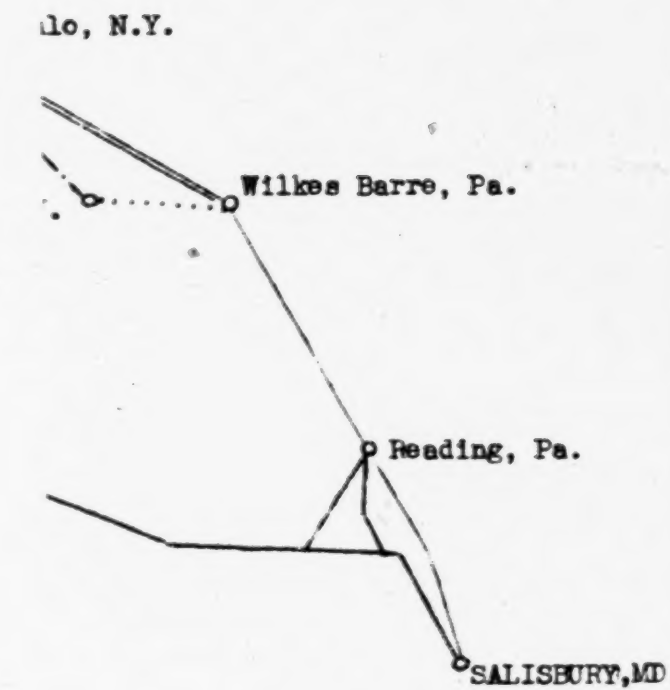
( — — — )	N.Y.C. & St.L. - Chicago, Ill. to Buffalo, N.Y.....	523
( — — — )	Lehigh Valley - Buffalo, N.Y. to Wilkes Barre, Pa....	272
( — — — )	Penna. R.R. - Wilkes Barre, Pa. to Salisbury, Md..	298
	TOTAL - - - - -	1093
( — — — )	N.Y.C. & St.L. - Chicago, Ill. to Buffalo, N.Y.....	523
( — — — )	D.L. & W. R.R. - Buffalo, N.Y. to Binghamton, N.Y....	203
( — — — )	D. & H. R.R. - Binghamton, N.Y. to Wilkes Barre, Pa.	116
( — — — )	Penna. R.R. - Wilkes Barre, Pa. to Salisbury, Md....	298
	TOTAL - - - - -	1140

TARIFF REFERENCES FOR MILEAGES

P.R.R.....	ICC 348
NYC&StL.....	ICC 5035
L.V.R.R.....	ICC-NoC-8325
D.L. & W.....	ICC 22330
D. & H.....	ICC 13731

ILLUSTRATING PRESENT P.R.R. ROUTES VS. THEORETICAL ROUTES  
TO ESTABLISH TRANSIT POINT ON DIRECT LINE; ALSO MILEAGES

EXHIBIT NO. 48  
WITNESS *Thomson*  
I.C.C. Docket 28647



( ——— )	PRESENT ROUTE	Miles
Pennsylvania Railroad:		
	Toledo, Ohio to Greencastle, Pa.....	571
	Greencastle, Pa. to Lambertville, N.J....	207
	Total.....	778
	Toledo, Ohio to Lambertville, N.J.....	651
	OUT OF ROUTE - - - - -	127

ROUTES TO ESTABLISH GREENCASTLE, PA. INTERMEDIATE

( — — — )	C. & O. Ry. - Toledo, O. to Durbin, W.Va.....	548
( — — — )	W.Md. Ry. - Durbin, W.Va. to Hagerstown, Md....	236
( — — — )	Penna. RR. - Hagerstown to Lambertville, N.J....	218
	TOTAL - - - - -	1002

( — — — )	C. & O. Ry. - Toledo, O. to Durbin, W.Va.....	548
( — — — )	W.Md. Ry. - Durbin, W.Va. to Hagerstown, Md....	236
( — — — )	Penna. RR. - Hagerstown to Lambertville, N.J....	218
	TOTAL - - - - -	1002

TARIFF REFERENCES FOR MILEAGES

P.R.R.....	ICC 348
NYC&StL.....	ICC 5035
L.V.R.R.....	ICC-NoC-8325
D.L. & W.....	ICC 22330
D. & H.....	ICC 13731

TARIFF REFERENCES FOR MILEAGE

P.R.R.....	ICC 398
C. & O.....	ICC 11081

## EXHIBIT No. 49

[fol. 764]

Statement Showing P.R.R. Haul from Representative C. F. A. Grain Origin Points to Representative Local Destinations on the Pennsylvania Railroad in Trunk Line Territory Via P.R.R. Direct Route, and Via Present Tariff Route Via Which P.R.R. Receives Shortest Possible Haul in Connection with Which Grain Transit Privileges are Applicable; also Via "Sought" Routes, and Percentage Comparisons.

	Chicago, Ill., to Salisbury, Md.		Decatur, Ill., to Chatham, Pa.		E. St. Louis, Ill., to Milford, N. J.		Peoria, Ill., to Dagsboro, Del.	
	Miles	Route	Miles	Route	Miles	Route	Miles	Route
P.R.R. Direct Route	902		869		1027		1057	
Shortest Haul Available to ) P.R.R. under Present Routes)	497	P.M.Ry.—E. Buffalo, N.Y.—P.R.R.	392	Wabash Ry.—Black Rock, N.Y.—P.R.R.	474	Wabash Ry.—Black Rock, N.Y.—P.R.R.	497	N.Y.C.&St.L.Ry.— Buffalo, N.Y.—P.R.R.
P.R.R. under "Sought" Routes:								
From Fulton Jct., Md.....	155		75		167		156	
From York, Pa.....	174		66		153		172	
	*****		*****		*****		*****	
Percentage P.R.R. Haul from Fulton Jct., Md. is of:								
P.R.R. Direct Route.....	17.18%		8.63%		16.26%		14.76%	
Shortest Present P.R.R. Haul	31.19%		19.39%		35.23%		31.39%	
Percentage P.R.R. Haul from York, Pa., is of:								
P.R.R. Direct Route.....	19.29%		7.59%		14.90%		16.27%	
Shortest Present P.R.R. Haul	35.01%		16.84%		32.28%		34.61%	

## Tariff References for Routes:

Wabash Ry. I.C.C. 6170  
Pere Marquette Ry. I.C.C. 4358  
N.Y.C.&St.L. Ry. I.C.C. 4375  
P.R.R. I.C.C. 399

P.R.R. Miles—P.R.R. I.C.C. 398.

CD-862



[fol. 765]

## EXHIBIT No. 50

Statement Showing Out of Route or Back Haul Charges Applicable in Connection with Grain, Carloads, Made into Feed, Under Applicable Milling and Mixing in Transit Tariffs, at Hagerstown, Md., Contrasted with Similar Charges at Cambridge, Md., and Norfolk, Va., When Originating at Chicago, Ill., Destined Points on the Del-Mar-Va Division of the Pennsylvania Railroad; also Mileage and Comparative Data.

CD-803

[fol. 766]

Sheet #2.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT CAMBRIDGE, MD.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Desti- nation	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill. to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Cam- bridge, Md.	P. R. R. Miles Cam- bridge, Md., to Desti- nation	P. R. R. Miles Chicago, Ill., to Destina- tion Via Cam- bridge, Md.	P. R. R. Miles Chicago, Ill., to Desti- nation	Excess P. R. R. Mileage Via Cam- bridge, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
Middletown, Del.....	791	182	973	824	149	18.08%	4.5	916	92	1,008	824	184	22.33%	9.0
Dover, Del.....	791	205	996	847	149	17.59	4.5	916	69	985	847	138	16.29	8.0
Harrington, Del.....	791	221	1,012	863	149	17.27	4.5	916	53	969	863	106	12.28	8.0
Seaford, Del.....	791	241	1,032	883	149	16.87	4.5	916	33	949	883	66	7.47	6.0
Delmar, Del.....	791	254	1,045	896	149	16.63	4.5	916	44	960	896	66	7.37	6.0
Georgetown, Del.....	791	246	1,037	888	149	16.78	4.5	916	78	994	888	106	11.94	8.0
Selbyville, Del.....	791	265	1,056	907	149	16.43	4.5	916	97	1,013	907	106	11.69	8.0
Snow Hill, Md.....	791	287	1,078	929	149	16.04	4.5	916	119	1,035	929	106	11.41	8.0
Centreville, Md.....	791	222	1,013	864	149	17.25	4.5	916	124	1,040	864	176	20.37	9.0
Easton, Md.....	791	238	1,029	880	149	16.93	4.5	916	124	1,040	880	160	18.18	9.0
Crisfield, Md.....	791	293	1,084	935	149	15.94	4.5	916	85	1,001	935	66	7.06	6.0
Pocomoke, Md.....	791	285	1,076	927	149	16.07	4.5	916	77	993	927	66	7.12	6.0
Onley, Va.....	791	314	1,105	956	149	15.59	4.5	916	106	1,022	956	66	6.90	6.0
Cape Charles, Va.....	791	349	1,140	991	149	15.04	4.5	916	141	1,057	991	66	6.66	6.0
Norfolk, Va.....	791	385	1,176	1,027	149	14.51	4.5	916	177	1,093	1,027	66	6.43	6.0
TOTAL.....		3,987	15,850	13,617					1,419	15,159	13,617	1,544		109.0
AVERAGE.....	791	265.8	1,056.8	907.8	149	16.42%	4.5	916	94.6	1,010.6	907.8	110.3	12.15%	7.267
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2220

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-803-2

[fol. 767]

Sheet # 3.

## TRANSIT AT HAGERSTOWN, MD.

## TRANSIT AT NORFOLK, VA.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Destination	P. R. R. Miles Chicago, Ill., to Hagers- town, Md.	P. R. R. Miles Hagers- town, Md., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Hagers- town, Md.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Hagers- town, Md.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column F Is of Column E)	Out of Route Charge (Cents Per 100 Pounds)	P. R. R. Miles Chicago, Ill., to Norfolk, Va.	P. R. R. Miles Nor- folk, Va., to Destina- tion	P. R. R. Miles Chicago, Ill., to Destina- tion Via Norfolk, Va.	P. R. R. Miles Chicago, Ill., to Destina- tion	Excess P. R. R. Mileage Via Nor- folk, Va.	Percentage Excess Mile- age Is of Distance Chicago, Ill., to Destina- tion (Column M Is of Column L)	Out of Route Charge (Cents Per 100 Pounds)
Middletown, Del.	791	182	973	824	149	18.08%	4.5	1,027	203	1,230	824	406	49.27%	10.0
Dover, Del.	791	205	996	847	149	17.59	4.5	1,027	180	1,207	847	360	42.50	9.0
Harrington, Del.	791	221	1,012	863	149	17.27	4.5	1,027	164	1,191	863	328	38.01	4.5
Seaford, Del.	791	241	1,032	883	149	16.87	4.5	1,027	144	1,171	883	288	32.62	4.5
Delmar, Del.	791	254	1,045	896	149	16.63	4.5	1,027	131	1,158	896	262	29.24	4.5
Georgetown, Del.	791	246	1,037	888	149	16.78	4.5	1,027	189	1,216	888	328	36.94	4.5
Selbyville, Del.	791	265	1,056	907	149	16.43	4.5	1,027	208	1,235	907	328	36.16	4.5
Snow Hill, Md.	791	287	1,078	929	149	16.04	4.5	1,027	230	1,257	929	328	35.31	4.5
Centreville, Md.	791	222	1,013	864	149	17.25	4.5	1,027	235	1,262	864	398	46.06	9.0
Easton, Md.	791	238	1,029	880	149	16.93	4.5	1,027	236	1,263	880	383	43.52	9.0
Cambridge, Md.	791	274	1,065	916	149	16.27	4.5	1,027	177	1,204	916	288	31.44	4.5
Cristfield, Md.	791	293	1,084	935	149	15.94	4.5	1,027	126	1,153	935	218	23.31	4.5
Pocomoke, Md.	791	285	1,076	927	149	16.07	4.5	1,027	100	1,127	927	200	21.57	4.5
Onley, Va.	791	314	1,105	956	149	15.59	4.5	1,027	71	1,098	956	142	14.85	4.5
Cape Charles, Va.	791	349	1,140	991	149	15.04	4.5	1,027	36	1,063	991	72	7.27	4.5
TOTAL	.....	3,876	15,741	13,506	.....	.....	.....	.....	2,430	17,835	13,506	4,329	.....	86.5
AVERAGE	791	258.4	1,049.4	900.4	149	16.55%	4.5	1,027	162.0	1,189.0	900.4	288.6	32.05%	5.77
							P. R. R. I. C. C. 2442							P. R. R. I. C. C. 2442

Tariff Reference for Mileages: P. R. R. I. C. C. 398.

CD-803-3

## EXHIBIT No. 51

[fol. 768]

Statement Showing Excess (Out-of-Route or Back-Haul) Mileage on Grain Originating West of Pittsburgh, Pa., Via P. R. R., Mixed into Feed in Transit at Hagerstown, Md., Destined to Represent Same Grain when Mixed into Feed in Transit at Said Representative Eastern Points Destined Hagerstown.

## FEED MIXING IN TRANSIT AT HAGERSTOWN, MD.

## FEED MIXING IN TR

Transit Point	Destination	See Note Number	P. R. R. Miles Pittsburgh, Pa. to Hagerstown, Md.	P. R. R. Miles Hagerstown, Md. to Destination	P. R. R. Miles Pittsburgh, Pa. to Destination Via Hagerstown, Md.	P. R. R. Direct Miles From Pittsburgh, Pa. to Destination	Excess Miles Via Hagerstown, Md.	Out of Route or Back-Haul Charge (Cents Per 100 Lbs.)	Tariff Reference For Transit P. R. R. I. C. C. No.	Local C. L. Rate on Mixed Feed Hagerstown, Md. to Destination (R)	Transit Point	Destination
Hagerstown, Md.	Reading, Pa.....	1	323	198	521	372	149	4.5	2442	17.0	(P)Reading, Pa.....	Hagerstown, Md.
"	Portsmouth, Va.....	..	323	385	708	559	149	4.5	2442	21.0	Portsmouth, Va.....	"
"	Wilmington, Del.....	1	323	177	500	351	149	4.5	2442	20.0	(P)Wilmington, Del.....	"
"	York, Pa.....	2	323	99	422	276	146	4.5	2442	14.0	York, Pa.....	"
"	Baltimore, Md.....	2	323	158	481	335	146	4.5	2442	14.0	Baltimore, Md.....	"
"	Bordentown, N. J.....	..	323	208	531	386	145	4.5	2442	17.0	(N)Bordentown, N. J.....	"
"	Frederick, Md.....	3	323	154	477	331	146	4.5	2442	13.0	Frederick, Md.....	"
"	Philadelphia, Pa.....	1	323	183	506	357	149	4.5	2442	17.0	(P)Philadelphia, Pa.....	"
"	Lancaster, Pa.....	1	323	111	434	285	149	4.5	2442	17.0	(P)Lancaster, Pa.....	"
"	Elizabethville, Pa.....	..	323	109	432	263	169	4.5	2442	17.0	(P)Elizabethville, Pa.....	"
Total.....							1497	45.0				
Average.....							(S)149.7	4.5				

Note 1—Milling or Mixing in Transit available at Hagerstown, Md., to this Destination for Reading Co. Delivery without Out-of-Route Charge from B. & O. R. R. Points in C. F. A. Territory

Note 2—Milling or Mixing in Transit available at Hagerstown, Md., to this Destination for W. M. Ry. Delivery without Out-of-Route Charge from B. & O. R. R. Points in C. F. A. Territory via B. &

Note 3—Milling or Mixing in Transit available at Hagerstown, Md., to this Destination for Potomac Edison Ry. Delivery without Out-of-Route Charge from N. Y. C. R. R. Points in C. F. A. Territory via N

(L)—No Transit Arrangement in Effect. Local Rate from Transit Point to Hagerstown, Md. per P. R. R. I. C. C. 2342 and Agt. W. S. Curlett's I. C. C. A-337, A-334, A-339, A-332.

(N)—Subject to New York, N. Y., Rate Inbound to Transit Point.

(P)—Subject to Philadelphia, Pa., Rate Inbound to Transit Point.

(R)—P. R. R. I. C. C. No. 2342 and Agt. W. S. Curlett's I. C. C. A-337, A-334, A-339, A-332.

(S)—Trunk Line Out-of-Route Scale for 149.7 Miles is 7.5¢ per 100 pounds.

(T)—For Average Back-Haul Distance of 160.7 Miles. Omitting Portsmouth, Va.

## EXHIBIT No. 51

burgh, Pa., Via P. R. R., Mixed into Feed in Transit at Hagerstown, Md., Destined to Representative Eastern Points and Charge Therefor Versus Excess Mileage and Charge Therefor on the when Mixed into Feed in Transit at Said Representative Eastern Points Destined Hagerstown, Md.

## FEED MIXING IN TRANSIT AT POINTS COMPETITIVE WITH HAGERSTOWN, MD.

Ex- cess Miles Via Hag- ers- town, Md.	Out of Route or Back- Haul Charge (Cents Per 100 Lbs.)	Tariff, Refer- ence For Trans- sit P. R. R. I. C. C. No.	Local C. L. Rate on Mixed Feed Hag- ers- town, Md. to Desti- nation (R)	Transit Point	Desti- nation	P. R. R. Miles Pitts- burgh, Pa. to Trans- sit Point	P. R. R. Miles Trans- sit Point To Hag- ers- town, Md.	P. R. R. Miles Pitts- burgh, Pa. to Hag- ers- town, Md. Via Trans- sit Point	P. R. R. Direct Miles From Pitts- burgh, Pa. to Hag- ers- town, Pa.	Ex- cess Miles Via Trans- sit Point	Out of Route or Back- Haul Charge (Cents Per 100 Lbs.)	Tariff Refer- ence For Trans- sit P. R. R. I. C. C. No.	Local C. L. Rate on Mixed Feed Trans- sit to Desti- nation (R)	Trunk Line Out of Route Scale (Cents Per 100 Lbs.)
149	4.5	2442	17.0	(P)Reading, Pa.....	Hagers- town, Md.	372	198	570	323	247	(L)18.0	.....	18.0	10.5
149	4.5	2442	21.0	Portsmouth, Va.....	"	559	385	944	323	621	(L)25.0	.....	25.0	.....
149	4.5	2442	20.0	(P)Wilmington, Del.....	"	351	177	528	323	205	9.0	2442	19.0	10.5
146	4.5	2442	14.0	York, Pa.....	"	276	99	375	323	52	1.0	2442	17.0	4.5
146	4.5	2442	14.0	Baltimore, Md.....	"	335	158	493	323	170	9.0	2220	16.0	9.0
145	4.5	2442	17.0	(N)Bordentown, N. J.....	"	386	208	594	323	271	(L)21.0	.....	21.0	10.5
146	4.5	2442	13.0	Frederick, Md.....	"	331	154	485	323	162	(L)13.0	.....	13.0	9.0
149	4.5	2442	17.0	(P)Philadelphia, Pa.....	"	357	183	540	323	217	10.5	2220	17.0	10.5
149	4.5	2442	17.0	(P)Lancaster, Pa.....	"	285	111	396	323	73	0.0	2442	17.0	6.0
169	4.5	2442	17.0	(P)Elizabethville, Pa.....	"	263	109	372	323	49	(L)17.0	.....	17.0	4.5
1497	45.0									2067	123.5			75.0
49.7	4.5									206.7	12.4			(T) 8.3

Co. Delivery without Out-of-Route Charge from B. & O. R. R. Points in C. F. A. Territory Via Central States Despatch Route.

Delivery without Out-of-Route Charge from B. & O. R. R. Points in C. F. A. Territory via B. & O. R. R., Cherry Run, W. Va., and W. M. Ry.

a Ry. Delivery without Out-of-Route Charge from N. Y. C. R. R. Points in C. F. A. Territory via N. Y. C. R. R.—P. & L. E. R. R.—W. M. Ry.—P. E. Ry.

R. I. C. C. 2342 and Agt. W. S. Curlett's I. C. C. A-337, A-334, A-339, A-332.

) B. & O. R. R. I. C. C.  
) No. 22482 and  
) W. M. Ry. I. C. C.  
) No. 8662.

) N. Y. C. R. R. I. C. C.  
) LS-1674 and W. M.  
) Ry. I. C. C. 8662.



## EXHIBIT No. 52

[fol. 769]

Statement Showing Territory on the Pennsylvania Railroad and Certain Lateral Lines in Central Freight Association Territory and Destination Territory on the Norfolk & Western Railway between which Feed Mixing in Transit is Available at Hagerstown, Md. (P. R. R.) without Out of Route or Back Haul Charge.

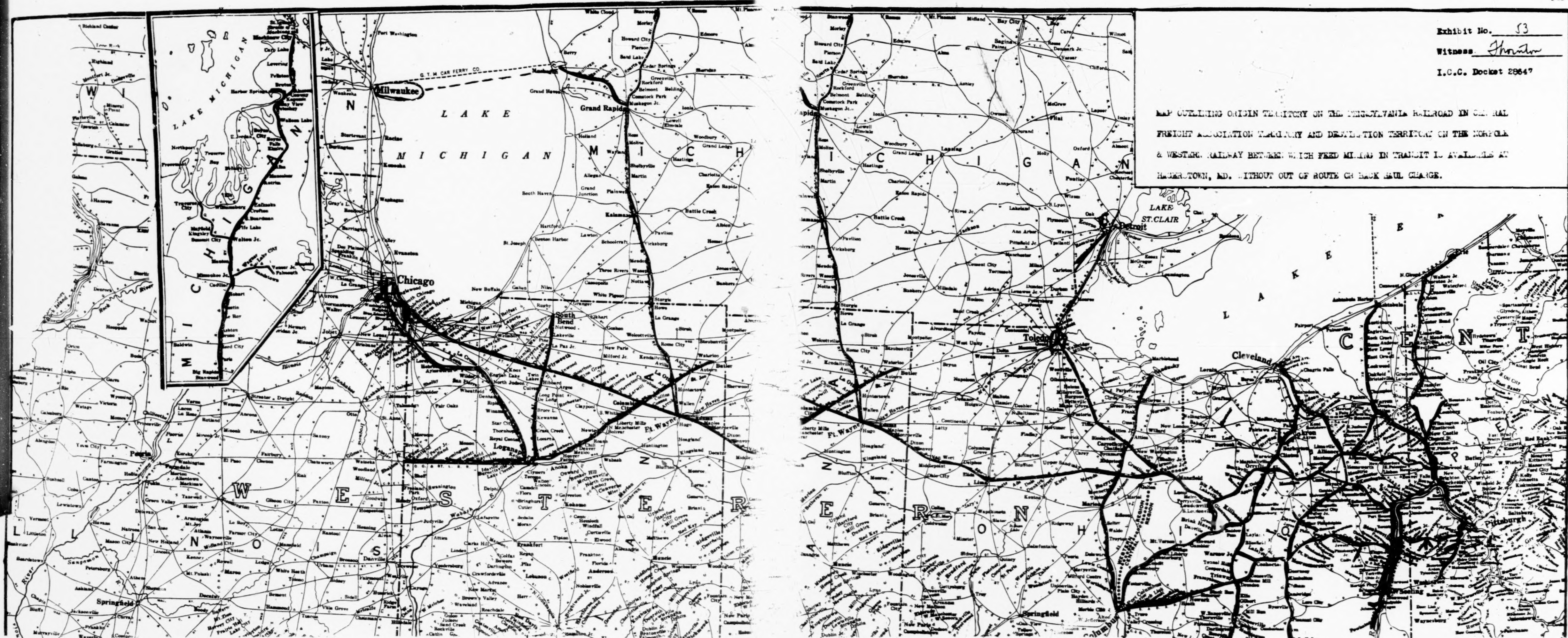
FROM ORIGIN STATIONS			TO N. & W. RY. DESTINATIONS		
Pennsylvania Railroad					
20060	Bellevue,	Pa.			
to					
20820	Bernice,	Ill.			
21005	West Bridgewater,	Pa.			
to					
22015	Toledo, Monroe St.,	O.			
22120	Worthington,	O.			
to					
22255	Sandusky Dock,	O.			
22315	Greer,	O.			
to					
22765	Westerville,	O.			
22780	Layland,	O.			
to					
22985	Washington Court House,	O.			
23105	Glanford,	Pa.			
to					
23765	Taylor,	O.			
24645	Logansport,	Ind.			
to					
24870	Effner,	Ind.			
26245	Ohio Falls,	Ind.			
to					
26315	South Bend,	Ind.			
26410	Adamsboro,	Ind.			
to					
26520	Butler,	Ind.			
26900	Fort Wayne,	Ind.			
to					
27845	Mackinaw City,	Mich.			
28405	Toledo,	O.			
to					
28445-E	Melvindale,	Mich.			

## TARIFF REFERENCES:

Rates on Grain, Grain Products and Grain By-Products, C. L.—Agent B. T. Jones' I. C. C. 3356.

Routing from P. R. R., P. & L. E. R. R., P. C. & Y. Ry. and P. L. & W. R. R. to N. & W. Ry.—Sup. 74 to P. R. R. I. C. C. 399, effective February 4, 1937.







## EXHIBIT No. 54

[fol. 771]

Statement Showing Charges in Cents Per 100 Pounds on Grain Originating at Typical C. F. A. Origin Points East of the C. F. A. Transit Point at which the Grain is Mixed to Representative Destinations in Trunk Line Territory; also Comparative Data.

## TRANSIT AT HAGERSTOWN, MD.

Origin of Grain	Destination of Mixed Feed	Transit Point	Thru Rate on Feed Origin To Destination		Transit Charge (Cents Per 100 Pounds)	Out of Route or Back Haul Charge		TOTAL Charge in Cents		Note	Transit P.
			Rate in Cents Per 100 Pounds	P. R. R. Miles		Cents Per 100 Pounds	P. R. R. Miles	Per 100 Pounds	P. R. R. Miles		
Cleveland, O.	New York, N. Y.	Hagerstown, Md.	25.5	580	0.5	4.5	149	30.5	729	No. 1	Circleville, O.
Cleveland, O.	Freehold, N. J.	Hagerstown, Md.	27.0	548	0.5	4.5	149	32.0	697	No. 1	Circleville, O.
Cleveland, O.	Wilmington, Del.	Hagerstown, Md.	23.5	489	0.5	4.5	149	28.5	638	No. 2	Circleville, O.
Cleveland, O.	Salisbury, Md.	Hagerstown, Md.	25.75	572	0.5	4.5	149	30.75	721	.....	Circleville, O.
Lima, O.	New York, N. Y.	Hagerstown, Md.	26.5	702	0.5	4.5	149	31.5	851	No. 1	Fort Wayne, Ind.
Lima, O.	Freehold, N. J.	Hagerstown, Md.	28.0	670	0.5	4.5	149	33.0	819	No. 1	Fort Wayne, Ind.
Lima, O.	Wilmington, Del.	Hagerstown, Md.	24.5	611	0.5	4.5	149	29.5	760	No. 2	Fort Wayne, Ind.
Lima, O.	Salisbury, Md.	Hagerstown, Md.	26.75	694	0.5	4.5	149	31.75	843	.....	Fort Wayne, Ind.
Dover, O.	New York, N. Y.	Hagerstown, Md.	25.5	553	0.5	4.5	149	30.5	702	No. 1	Akron, O.
Dover, O.	Freehold, N. J.	Hagerstown, Md.	27.0	521	0.5	4.5	149	32.0	670	No. 1	Akron, O.
Dover, O.	Wilmington, Del.	Hagerstown, Md.	23.5	462	0.5	4.5	149	28.5	611	No. 2	Akron, O.
Dover, O.	Salisbury, Md.	Hagerstown, Md.	25.75	545	0.5	4.5	149	30.75	694	.....	Akron, O.
Mansfield, O.	New York, N. Y.	Hagerstown, Md.	25.5	616	0.5	4.5	149	30.5	765	No. 1	Toledo, O.
Mansfield, O.	Freehold, N. J.	Hagerstown, Md.	27.0	584	0.5	4.5	149	32.0	733	No. 1	Toledo, O.
Mansfield, O.	Wilmington, Del.	Hagerstown, Md.	23.5	525	0.5	4.5	149	28.5	674	No. 2	Toledo, O.
Mansfield, O.	Salisbury, Md.	Hagerstown, Md.	25.75	608	0.5	4.5	149	30.75	757	.....	Toledo, O.

Note No. 1—Via B. & O., Cherry Run, W. Va., W. Md. Ry., Shippensburg, Pa., Rdg. Co., Allentown, Pa., C.R.R. N. J. rate from origin to destination plus transit charge R. R. I. C. C. A-4 and W. Md. Ry. I. C. C. 8662.

Note No. 2—Via B. & O., Cherry Run, W. Va., W. Md. Ry., Shippensburg, Pa., Rdg. Co. rate from origin to destination plus transit charge of 1/2¢ per 100 pounds without Ry. I. C. C. 8662.

Note No. 3—Charges are based on rate from transit point to destination plus transit charge of 1/2¢ per 100 pounds plus out of route or back haul charge per P. R. R. I. C.

## EXHIBIT No. 54

1 C. F. A. Origin Points East of the C. F. A. Transit Point at which the Grain is Mixed into Feed Vs. Transit at Hagerstown, Md., from Same Typical C. F. A. Origin Points to Representative Destinations in Trunk Line Territory; also Comparative Data.

## HAGERSTOWN, MD.

## TRANSIT AT A POINT IN C. F. A. TERRITORY

Transit Charge Cents Per 100 Pounds)	Out of Route or Back Haul Charge		TOTAL Charge in Cents		Note	Transit Point	Thru Rate on Feed Origin To Destination		Transit Point To Destination		Transit Charge (Cents Per 100 Pounds)	Out of Route or Back Haul Charge		TOTAL (Note #3) Charge in Cents	
	Cents Per 100 Pounds	P. R. R. Miles	Per 100 Pounds	P. R. R. Miles			Rate in Cents Per 100 Pounds	P. R. R. Miles	Rate in Cents Per 100 Pounds	P. R. R. Miles		Cents Per 100 Pounds	P. R. R. Miles	Per 100 Pounds	P. R. R. Miles
0.5	4.5	149	30.5	729	No. 1	Circleville, O.....	25.5	580	26.5	659	0.5	5.5	206	32.5	865
0.5	4.5	149	32.0	697	No. 1	Circleville, O.....	27.0	548	28.0	627	0.5	5.5	206	34.0	833
0.5	4.5	149	28.5	638	No. 2	Circleville, O.....	23.5	489	24.5	568	0.5	5.5	206	30.5	774
0.5	4.5	149	30.75	721	.....	Circleville, O.....	25.75	572	26.75	651	0.5	5.5	206	32.75	857
0.5	4.5	149	31.5	851	No. 1	Fort Wayne, Ind.....	26.5	702	30.5	762	0.5	5.0	60	36.0	822
0.5	4.5	149	33.0	819	No. 1	Fort Wayne, Ind.....	28.0	670	32.0	730	0.5	5.0	60	37.5	790
0.5	4.5	149	29.5	760	No. 2	Fort Wayne, Ind.....	24.5	611	28.5	671	0.5	5.0	60	34.0	731
0.5	4.5	149	31.75	843	.....	Fort Wayne, Ind.....	26.75	694	30.75	754	0.5	5.0	60	36.25	814
0.5	4.5	149	30.5	702	No. 1	Akron, O.....	25.5	553	25.5	568	0.5	6.5	85	32.5	653
0.5	4.5	149	32.0	670	No. 1	Akron, O.....	27.0	521	27.0	536	0.5	6.5	85	34.0	621
0.5	4.5	149	28.5	611	No. 2	Akron, O.....	23.5	462	23.5	477	0.5	6.5	85	30.5	562
0.5	4.5	149	30.75	694	.....	Akron, O.....	25.75	545	25.75	560	0.5	6.5	85	32.75	645
0.5	4.5	149	30.5	765	No. 1	Toledo, O.....	25.5	616	26.5	701	0.5	6.5	85	33.5	786
0.5	4.5	149	32.0	733	No. 1	Toledo, O.....	27.0	584	28.0	669	0.5	6.5	85	35.0	754
0.5	4.5	149	28.5	674	No. 2	Toledo, O.....	23.5	525	24.5	610	0.5	6.5	85	31.5	695
0.5	4.5	149	30.75	757	.....	Toledo, O.....	25.75	608	26.75	693	0.5	6.5	85	33.75	778

Co., Allentown, Pa., C.R.R. N. J. rate from origin to destination plus transit charge of  $\frac{1}{2}\text{¢}$  per 100 pounds without out of route or back haul charge applies per B. & O.

Co. rate from origin to destination plus transit charge of  $\frac{1}{2}\text{¢}$  per 100 pounds without out of route or back haul charge applies per B. & O R. R. I. C. C. A-4 and W. Md.

charge of  $\frac{1}{2}\text{¢}$  per 100 pounds plus out of route or back haul charge per P. R. R. I. C. C. 2500.

Statement Showing Charges in Cents Per 100 Pounds on Grain Originating at Typical C.F.A. Origin Points East of the C.F.A. Transit Point at which the Grain is Mixed into Feed Vs. Transit at Hagerstown, Md., from Same Typical C. F. A. Origin Points to Representative Destinations in Trunk Line Territory; also Comparative Data.

## COMPARATIVE DATA

Origin of Grain	Destination of Mixed Feed	Total Distance From Origin To Destination		Amount In Cents Per 100 Pounds Over Rate From Origin To Destination and Transit Charge of $\frac{1}{2}\text{¢}$ Per 100 Pounds When Transit Is Performed At:—	
		Via Hagerstown, Md. (Miles)	Via C. F. A. (Note # 3) Transit Point (Miles)	Hagerstown, Md. (When Movement is Via P. R. R.)	C. F. A. Transit Point
Cleveland, O.	New York, N. Y.	729	865	4.5	6.5
Cleveland, O.	Freehold, N. J.	697	833	4.5	6.5
Cleveland, O.	Wilmington, Del.	638	774	4.5	6.5
Cleveland, O.	Salisbury, Md.	721	857	4.5	6.5
Lima, O.	New York, N. Y.	851	822	4.5	9.0
Lima, O.	Freehold, N. J.	819	790	4.5	9.0
Lima, O.	Wilmington, Del.	760	731	4.5	9.0
Lima, O.	Salisbury, Md.	843	814	4.5	9.0
Dover, O.	New York, N. Y.	702	653	4.5	6.5
Dover, O.	Freehold, N. J.	670	621	4.5	6.5
Dover, O.	Wilmington, Del.	611	562	4.5	6.5
Dover, O.	Salisbury, Md.	694	645	4.5	6.5
Mansfield, O.	New York, N. Y.	765	786	4.5	7.5
Mansfield, O.	Freehold, N. J.	733	754	4.5	7.5
Mansfield, O.	Wilmington, Del.	674	695	4.5	7.5
Mansfield, O.	Salisbury, Md.	757	778	4.5	7.5
TOTAL		11,664	11,980	72.0	118.0
AVERAGE		729	748.75	4.5	7.375

TARIFF REFERENCES:—Transit and Back Haul Charges—Hagerstown, Md.—P. R. R. I. C. C. 2442.

“ “ “ “ “ —C. F. A. Points — “ “ 2500.

Rates on Grain and Grain Products—Agent B. T. Jones' I. C. C. 3356.

Mileages—P. R. R. I. C. C. 398.



[fol. 773]

## EXHIBIT No. 55

Statement Showing Basis of Rates Applicable in Connection with Grain, Carloads, from Chicago, Ill., on Domestic Reshipping Rate—Made into Feed at Various Transit Points on Trunk Line Railroads in the States of New York and Pennsylvania—Destined to Points on the Pennsylvania Railroad in New Jersey, Delaware and Maryland VERSUS Rates that would Apply were Joint Through Rates and Routes Effective Via Such Transit Points; Also Mileage and Comparative Data.

(As is Shown in Statement Combination Rates made on the Transit Point are Applicable in Every Instance.)

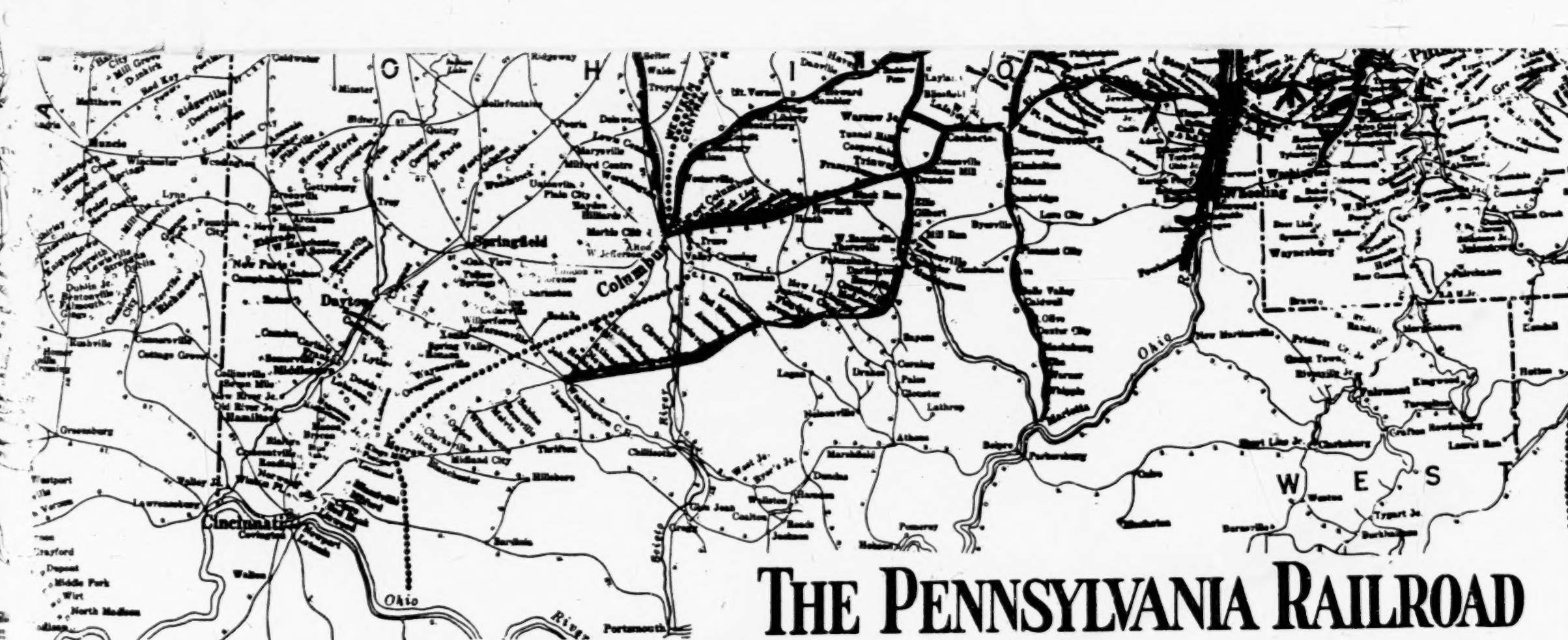
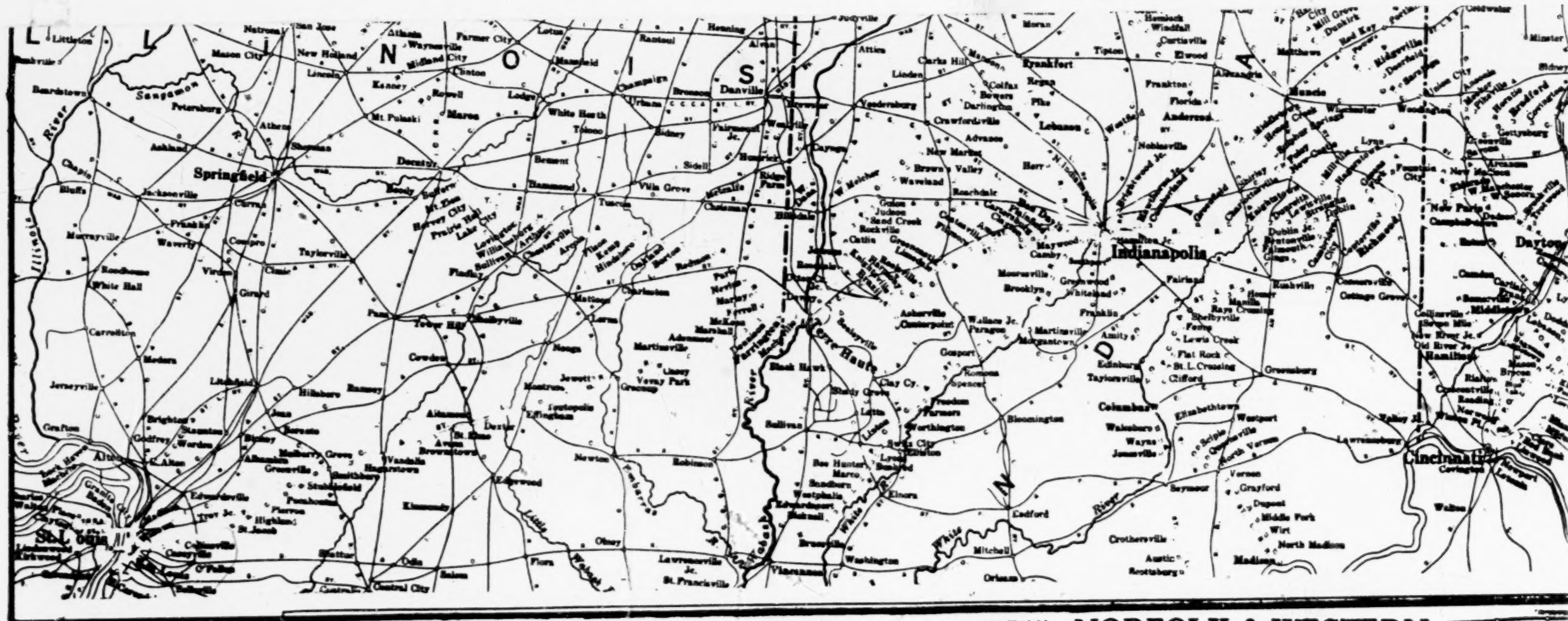
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[fol. 774]

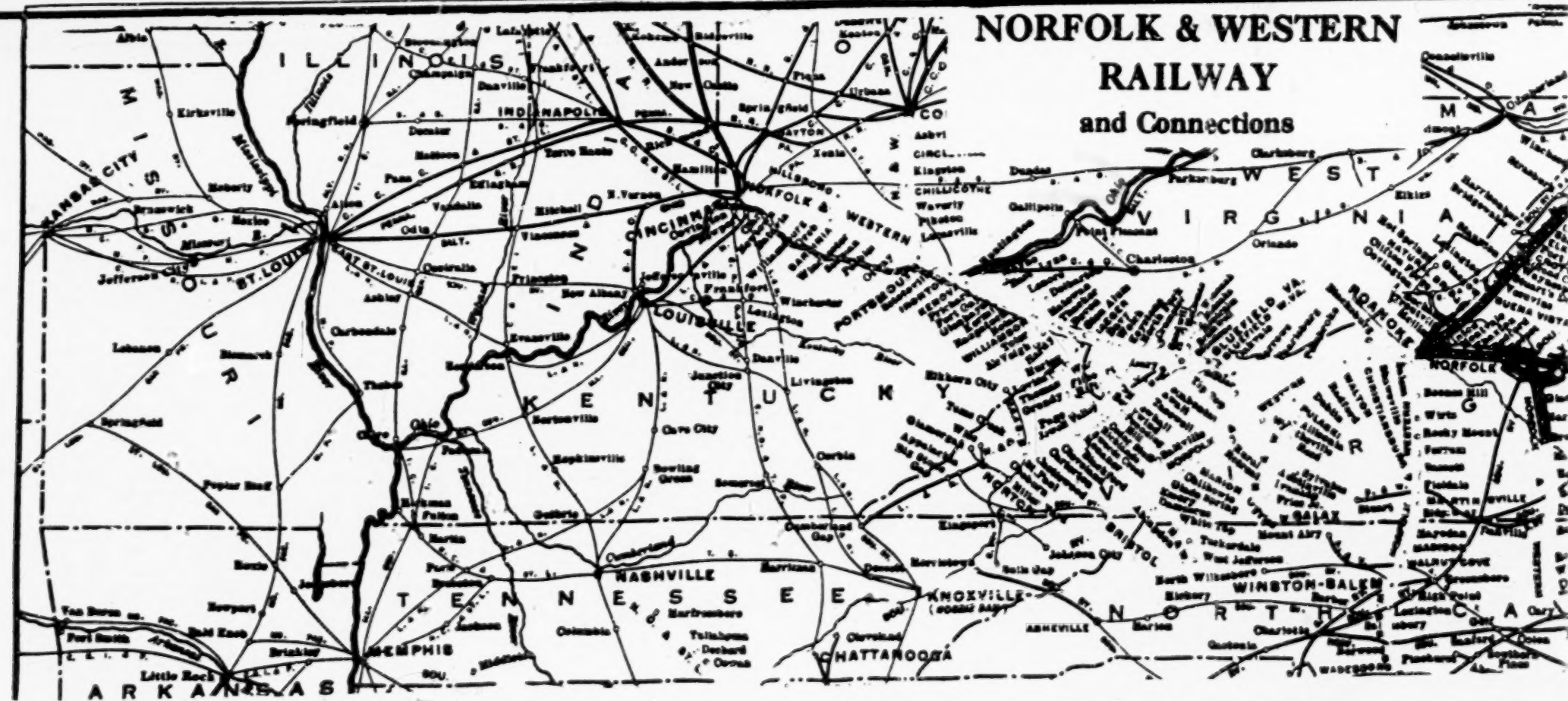
(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION								TRANSIT POINT
	Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.		
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	
Treichlers, Pa. (CRRNJ)									Waverly, N. Y. (LVRR)
PMRy—Chicago, Ill. to Buffalo, N. Y.	591		591		591		591		NYC&StLRy—Chicago, Ill. to Buffalo, N. Y.
DL&WRR—Buffalo, N. Y. to Taylor, Pa.	265		265		265		265		LVRR—Buffalo, N. Y. to Waverly, N. Y.
CRRNJ—Taylor, Pa. to Treichlers, Pa.	88		88		88		88		LVRR—Waverly, N. Y. to Wilkes Barre, Pa.
CRRNJ—Treichlers, Pa. to Phillipsburg, N. J.	28		28		28		28		PRR—Wilkes Barre, Pa. to Destination
PRR—Phillipsburg, N. J. to Destination	214		159		73		255		LVRR—Waverly, N. Y. to Phillipsburg, N. J.
Total	1186		1131		1045		1227		PRR—Phillipsburg, N. J. to Destination
Reshipping Rate (Domestic) Chicago, Ill. to:									Total
Destination		26 $\frac{3}{4}$		26 $\frac{3}{4}$		26 $\frac{1}{2}$		25	Reshipping Rate (Domestic) Chicago, Ill. to:
Transit Point		24		24		24		24	Destination
Local Rate—Transit Point to Destination		21		19		17		23	Transit Point
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		45		43		41		47	Local Rate—Transit Point to Destination
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27 $\frac{1}{4}$		27 $\frac{1}{4}$		27		25 $\frac{1}{2}$	Combination of Chicago Reshipping Rate to Transit Plus Local Rate from Transit Point to Destination (In Effect at Present Date)
PRR Distance—Chicago, Ill. to Destination	902		847		866		874		Chicago Reshipping Rate to Destination plus Transit of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)
Circuity via Transit Point	Miles	284	Miles	284	Miles	179	Miles	353	PRR Distance—Chicago, Ill. to Destination
vs. PRR Direct	Percentage	31.49	Percentage	33.53	Percentage	20.67	Percentage	40.39	Circuity via Transit Point
									vs. PRR Direct
Waverly, N. Y. (DL&WRR)									Binghamton, N. Y. (Erie RR)
Wabash Ry—Chicago, Ill. to Buffalo, N. Y.	503		503		503		503		Erie RR—Chicago, Ill. to Binghamton, N. Y.
DL&WRR—Buffalo, N. Y. to Waverly, N. Y.	165		165		165		165		Erie RR—Binghamton, N. Y. to Marion (Croxtan) N
DL&WRR—Waverly, N. Y. to Elmira, N. Y.	19		19				19		PRR—Marion (Croxtan), N. J. to Destination
PRR—Elmira, N. Y. to Destination	356		301				329		Erie RR—Binghamton, N. Y. to Elmira, N. Y.
DL&WRR—Waverly, N. Y. to Manunka Chunk, N. J.					165				PRR—Elmira, N. Y. to Destination
PRR—Manunka Chunk, N. J. to Destination					90				Total
Total	1043		988		923		1016		Reshipping Rate (Domestic) Chicago, Ill. to:
Reshipping Rate (Domestic) Chicago, Ill. to:									Destination
Destination		26 $\frac{3}{4}$		26 $\frac{3}{4}$		26 $\frac{1}{2}$		25	Transit Point
Transit Point		23		23		23		23	Local Rate—Transit Point to Destination
Local Rate—Transit Point to Destination		21		21		18		20	Combination of Chicago Reshipping Rate to Transi plus Local Rate from Transit Point to Destination (In Effect at Present Date)
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		44		44		41		43	Chicago Reshipping Rate to Destination plus Transit of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27 $\frac{1}{4}$		27 $\frac{1}{4}$		27		25 $\frac{1}{2}$	PRR Distance—Chicago, Ill. to Destination
PRR Distance—Chicago, Ill. to Destination	902		847		866		874		Circuity via Transit Point
Circuity via Transit Point	Miles	141	Miles	141	Miles	57	Miles	142	vs. PRR Direct
vs. PRR Direct	Percentage	15.63	Percentage	16.65	Percentage	6.58	Percentage	16.25	





# THE PENNSYLVANIA RAILROAD



- INDICATES ORIGIN TERRITORY ON THE PENNSYLVANIA RAILROAD
- INDICATES DESTINATION TERRITORY ON NORFOLK & WESTERN RY.



(ALL RATES IN CENTS PER 100 POUNDS)

DESTINATION						DESTINATION									
Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.		TRANSIT POINT		Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
Files	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
591		591		591		Waverly, N. Y. (LVRR)									
265		265		265		NYC&StLRy—Chicago, Ill. to Buffalo, N. Y.	523	523	523	523	523	523	523	523	523
88		88		88		LVRR—Buffalo, N. Y. to Waverly, N. Y.	179	179	179	179	179	179	179	179	179
28		28		28		LVRR—Waverly, N. Y. to Wilkes Barre, Pa.	98	98	98	98	98	98	98	98	98
159		73		255		PRR—Wilkes Barre, Pa. to Destination	298	243	243	243	243	243	243	275	275
						LVRR—Waverly, N. Y. to Phillipsburg, N. J.					190	190	190		
						PRR—Phillipsburg, N. J. to Destination					73	73	73		
131		1045		1227		Total	1098	1043	1043	1043	965	965	965	1075	1075
	26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25	Reshipping Rate (Domestic) Chicago, Ill. to:									
	24		24		24	Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	26 <sup>1</sup> / <sub>2</sub>	26 <sup>1</sup> / <sub>2</sub>	25	25
	19		17		23	Transit Point	23	23	23	23	23	23	23	23	23
						Local Rate—Transit Point to Destination	21	21	21	21	17	17	17	20	20
	43		41		47	Combination of Chicago Reshipping Rate to Transit Point Plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	44	44	44	40	40	40	43	43
	27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>	Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	27	27	25 <sup>1</sup> / <sub>2</sub>	25 <sup>1</sup> / <sub>2</sub>
847		866		874		PRR Distance—Chicago, Ill. to Destination	902	847	847	847	866	866	866	874	874
284		179		353		Circuity via Transit Point (Miles)	196	196	196	196	99	99	99	201	201
53		20.67		40.39		vs. PRR Direct (Percentage)	21.73	23.14	23.14	23.14	11.43	11.43	11.43	23.00	23.00
503		503		503		Binghamton, N. Y. (Erie RR)									
165		165		165		Erie RR—Chicago, Ill. to Binghamton, N. Y.	773	773	773	773	773	773	773	773	773
19				19		Erie RR—Binghamton, N. Y. to Marion (Croxtan) N. J.					269	269	269		
301				329		PRR—Marion (Croxtan), N. J. to Destination					39	39	39		
		165				Erie RR—Binghamton, N. Y. to Elmira, N. Y.	59	59	59	59				59	59
		90				PRR—Elmira, N. Y. to Destination	356	301	301	301				329	329
988		923		1016		Total	1188	1133	1133	1133	1081	1081	1081	1161	1161
	26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25	Reshipping Rate (Domestic) Chicago, Ill. to:									
	23		23		23	Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	26 <sup>1</sup> / <sub>2</sub>	26 <sup>1</sup> / <sub>2</sub>	25	25
	21		18		20	Transit Point	23	23	23	23	23	23	23	23	23
						Local Rate—Transit Point to Destination	21	21	21	21	18	18	18	20	20
	44		41		43	Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	44	44	44	41	41	41	43	43
	27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>	Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	27	27	25 <sup>1</sup> / <sub>2</sub>	25 <sup>1</sup> / <sub>2</sub>
847		866		874		PRR Distance—Chicago, Ill. to Destination	902	847	847	847	866	866	866	874	874
141		57		142		Circuity via Transit Point (Miles)	286	286	286	286	215	215	215	287	287
1.65		6.58		16.25		vs. PRR Direct (Percentage)	31.71	33.77	33.77	33.77	24.83	24.83	24.83	32.84	32.84

(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION			
	Salisbury, Md.	Dover, Del.	Jamesburg, N. J.	Popes Creek, Md.
	Miles	Rate	Miles	Rate
Cayuga, N. Y. (LVRR)				
MCRR—Chicago, Ill. to Suspension Bridge, N. Y.	511		511	511
LVRR—Suspension Bridge, N. Y. to Cayuga, N. Y.	136		136	136
LVRR—Cayuga, N. Y. to Wilkes Barre, Pa.	170		170	170
PRR—Wilkes Barre, Pa. to Destination	298		243	275
LVRR—Cayuga, N. Y. to Phillipsburg, N. J.			263	
PRR—Phillipsburg, N. J. to Destination			73	
Total	1115		983	1092
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
Transit Point	23	23	23	23
Local Rate—Transit Point to Destination	21	21	17	20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	44	40	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	902	847	866	874
Circuitry via Transit Point (Miles)	213	213	117	218
vs. PRR Direct (Percentage)	23.61	25.15	13.51	24.94

Cortland, N. Y. (LVRR)				
PMRY—Chicago, Ill. to Suspension Bridge, N. Y.	583		583	583
LVRR—Suspension Bridge, N. Y. to Cortland, N. Y.	191		191	191
LVRR—Cortland, N. Y. to Wilkes Barre, Pa.	156		156	156
PRR—Wilkes Barre, Pa. to Destination	298		243	275
LVRR—Cortland, N. Y. to Phillipsburg, N. J.			249	
PRR—Phillipsburg, N. J. to Destination			73	
Total	1228		1096	1205
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
Transit Point	23	23	23	23
Local Rate—Transit Point to Destination	21	21	17	20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	44	40	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago to Destination	902	847	866	874
Circuitry via Transit Point (Miles)	326	326	230	331
vs. PRR Direct (Percentage)	36.14	38.49	26.56	37.87

(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION			
	Dover, Del.	Jamesburg, N. J.	Popes Creek, Md.	
	Miles	Rate	Miles	Rate
Spencer, N. Y. (LVRR)				
NYCRR—Chicago, Ill. to Buffalo, N. Y.	511		511	
LVRR—Buffalo, N. Y. to Spencer, N. Y.	136		136	
LVRR—Spencer, N. Y. to Wilkes Barre, Pa.	170		170	
PRR—Wilkes Barre, Pa. to Destination	243		275	
LVRR—Spencer, N. Y. to Phillipsburg, N. J.		263		
PRR—Phillipsburg, N. J. to Destination		73		
Total	1060		983	1092
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>		25
Transit Point	23	23		23
Local Rate—Transit Point to Destination	21	17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	847	866		874
Circuitry via Transit Point (Miles)	213	117		218
vs. PRR Direct (Percentage)	5.15	13.51		24.94

Horseheads, N. Y. (LVRR)				
WABRY—Chicago, Ill. to Buffalo, N. Y.	583		583	
LVRR—Buffalo, N. Y. to Horseheads, N. Y.	191		191	
LVRR—Horseheads, N. Y. to Wilkes Barre, Pa.	156		156	
PRR—Wilkes Barre, Pa. to Destination	243		275	
LVRR—Horseheads, N. Y. to Phillipsburg, N. J.		249		
PRR—Phillipsburg, N. J. to Destination		73		
Total	1173		1096	1205
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>		25
Transit Point	23	23		23
Local Rate—Transit Point to Destination	21	17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago to Destination	847	866		874
Circuitry via Transit Point (Miles)	326	230		331
vs. PRR Direct (Percentage)	4.49	26.56		37.87

TRANSIT POINT	DESTINATION			
	Salisbury, Md.	Dover, Del.	Jamesburg, N. J.	Popes Creek, Md.
	Miles	Rate	Miles	Rate
Spencer, N. Y. (LVRR)				
NYCRR—Chicago, Ill. to Buffalo, N. Y.	523		523	523
LVRR—Buffalo, N. Y. to Spencer, N. Y.	165		165	165
LVRR—Spencer, N. Y. to Wilkes Barre, Pa.	114		114	114
PRR—Wilkes Barre, Pa. to Destination	298		243	275
LVRR—Spencer, N. Y. to Phillipsburg, N. J.			206	
PRR—Phillipsburg, N. J. to Destination			73	
Total	1100		967	1077
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
Transit Point	23	23	23	23
Local Rate—Transit Point to Destination	21	21	17	20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	44	40	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	902	847	866	874
Circuitry via Transit Point (Miles)	198	198	101	203
vs. PRR Direct (Percentage)	21.95	23.38	11.96	23.23

Horseheads, N. Y. (LVRR)				
WABRY—Chicago, Ill. to Buffalo, N. Y.	503		503	503
LVRR—Buffalo, N. Y. to Horseheads, N. Y.	199		199	199
LVRR—Horseheads, N. Y. to Wilkes Barre, Pa.	131		131	131
PRR—Wilkes Barre, Pa. to Destination	298		243	275
LVRR—Horseheads, N. Y. to Phillipsburg, N. J.			224	
PRR—Phillipsburg, N. J. to Destination			73	
Total	1131		999	1108
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
Transit Point	23	23	23	23
Local Rate—Transit Point to Destination	21	21	17	20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	44	40	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago to Destination	902	847	866	874
Circuitry via Transit Point (Miles)	229	229	133	234
vs. PRR Direct (Percentage)	25.39	27.04	15.36	26.77



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(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT		DESTINATION								TRANSIT POINT	
		Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.			
		Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate		
Tunkannock, Pa. (LVRR)											
ERIE RR—Chicago, Ill. to Buffalo, N. Y.		610		610		610		610		Miners Mills, Pa. (LVRR)	
LVRR—Buffalo, N. Y. to Tunkhannock, Pa.		237		237		237		237		PMRY—Chicago, Ill. to Suspension Bridge, N. Y.	
LVRR—Tunkhannock, Pa. to Hazleton, Pa.		75		75				75		LVRR—Suspension Bridge, N. Y. to Miners Mills, Pa.	
PRR—Hazleton, Pa. to Destination		245		190				264		LVRR—Miners Mills, Pa. to Hazleton, Pa.	
LVRR—Tunkhannock, Pa. to Phillipsburg, N. J.						123				PRR—Hazleton, Pa. to Destination	
PRR—Phillipsburg, N. J. to Destination						73				LVRR—Miners Mills, Pa. to Phillipsburg, N. J.	
Total		1167		1112		1043		1186		PRR—Phillipsburg, N. J. to Destination	
Reshipping Rate (Domestic) Chicago, Ill. to:										Total	
Destination			26 <sup>3</sup> / <sub>4</sub>		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25	Reshipping Rate (Domestic) Chicago, Ill. to:	
Transit Point			24		24		24		24	Destination	
Local Rate—Transit Point to Destination			21		21		17		20	Transit Point	
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)			45		45		41		44	Local Rate—Transit Point to Destination	
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)			27 <sup>1</sup> / <sub>4</sub>		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>	Combination of Chicago Reshipping Rate to Transit plus Local Rate from Transit Point to Destination (In Effect at Present Date)	
PRR Distance—Chicago, Ill. to Destination		902		847		866		874		Chicago Reshipping Rate to Destination plus Transit of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	
Circuity via Transit Point Miles		265		265		177		312		PRR Distance—Chicago, Ill. to Destination	
vs. PRR Direct Percentage		29.38		31.29		20.44		35.70		Circuity via Transit Point Miles	
<hr/>											
Bloomsbury, N. J. (LVRR)											
B&ORR—Chicago, Ill. to Buffalo, N. Y.		687		687		687		687		Linfield, Pa. (RDG. CO.)	
LVRR—Buffalo, N. Y. to Bloomsbury, N. J.		372		372		372		372		NYCRR—Chicago, Ill. to Newberry Jet., Pa.	
LVRR—Bloomsbury, N. J. to Phillipsburg, N. J.		8		8		8		8		RDG. CO.—Newberry Jet., Pa. to Linfield, Pa.	
PRR—Phillipsburg, N. J. to Destination		214		159		73		255		RDG. CO.—Linfield, Pa. to Belmont, Pa.	
Total		1281		1226		1140		1322		PRR—Belmont, Pa. to Destination	
Reshipping Rate (Domestic) Chicago, Ill. to:										Total	
Destination			26 <sup>3</sup> / <sub>4</sub>		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25	Reshipping Rate (Domestic) Chicago, Ill. to:	
Transit Point			26		26		26		26	Destination	
Local Rate—Transit Point to Destination			22		19		15		24	Transit Point	
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)			48		45		41		50	Local Rate—Transit Point to Destination	
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)			27 <sup>1</sup> / <sub>4</sub>		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>	Combination of Chicago Reshipping Rate to Transit plus Local Rate from Transit Point to Destination (In Effect at Present Date)	
PRR Distance—Chicago, Ill. to Destination		902		847		866		874		Chicago Reshipping Rate to Destination plus Transit of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	
Circuity via Transit Point Miles		379		379		274		448		PRR Distance—Chicago, Ill. to Destination	
vs. PRR Direct Percentage		42.02		44.75		31.64		51.26		Circuity via Transit Point Miles	
										vs. PRR Direct Percentage	

(ALL RATES IN CENTS PER 100 POUNDS)

## DESTINATION

## DESTINATION

## TRANSIT POINT

Dover, Del.	Jamesburg, N. J.	Popes Creek, Md.
Miles	Miles	Miles
Rate	Rate	Rate
10	610	610
237	237	237
75	.....	75
90	.....	264
.....	123	.....
.....	73	.....
12	1043	1186
26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
24	24	24
21	17	20
45	41	44
27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
47	866	874
65	177	312
29	20.44	35.70

## Miners Mills, Pa. (LVRR)

PMRY—Chicago, Ill. to Suspension Bridge, N. Y. ....	583	583	583	583
LVRR—Suspension Bridge, N. Y. to Miners Mills, Pa. ....	287	287	287	287
LVRR—Miners Mills, Pa. to Hazleton, Pa. ....	53	53	.....	53
PRR—Hazleton, Pa. to Destination. ....	245	190	.....	264
LVRR—Miners Mills, Pa. to Phillipsburg, N. J. ....	.....	.....	102	.....
PRR—Phillipsburg, N. J. to Destination. ....	.....	.....	73	.....

Total .....	1168	1113	1045	1187
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination .....	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
Transit Point .....	24	24	24	24
Local Rate—Transit Point to Destination .....	21	21	17	24
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination .....	45	45	41	48
(In Effect at Present Date)				
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds .....	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
(Not Effective—Shown for Comparison Only)				
PRR Distance—Chicago, Ill. to Destination .....	902	847	866	874
Circuity via Transit Point Miles .....	266	266	179	313
vs. PRR Direct Percentage .....	29.49	31.40	20.67	35.81

## Linfield, Pa. (RDG. CO.)

NYCRR—Chicago, Ill. to Newberry Jet., Pa. ....	675	675	675	675
RDG. CO.—Newberry Jet., Pa. to Linfield, Pa. ....	168	168	168	168
RDG. CO.—Linfield, Pa. to Belmont, Pa. ....	30	30	30	30
PRR—Belmont, Pa. to Destination .....	134	79	55	175

Total .....	1007	952	928	1048
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination .....	26 <sup>3</sup> / <sub>4</sub>	26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
Transit Point .....	24	24	24	24
Local Rate—Transit Point to Destination .....	20	17	15	21
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination .....	44	41	39	45
(In Effect at Present Date)				
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds .....	27 <sup>1</sup> / <sub>4</sub>	27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
(Not Effective—Shown for Comparison Only)				
PRR Distance—Chicago, Ill. to Destination .....	902	847	866	874
Circuity via Transit Point Miles .....	105	105	62	174
vs. PRR Direct Percentage .....	11.64	12.40	7.16	19.91

87	687	687
72	372	372
8	8	8
59	73	255
26	1140	1322
26 <sup>3</sup> / <sub>4</sub>	26 <sup>1</sup> / <sub>2</sub>	25
26	26	26
19	15	24
45	41	50
27 <sup>1</sup> / <sub>4</sub>	27	25 <sup>1</sup> / <sub>2</sub>
47	866	874
79	274	448
75	31.64	51.26

(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION							
	Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Manheim, Pa. (RDG. CO.)								
ERIE RR—Chicago, Ill. to Newberry Jet., Pa.	806		806		806		806	
RDG. CO.—Newberry Jet., Pa. to Manheim, Pa.	175		175		175		175	
RDG. CO.—Manheim, Pa. to Belmont, Pa.	86		86		86			
PRR—Belmont, Pa. to Destination	134		79		55			
RDG. CO.—Manheim, Pa. to Harrisburg, Pa.							42	
PRR—Harrisburg, Pa. to Destination							158	
Total	1201		1146		1122		1181	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26 <sup>3</sup> / <sub>4</sub>		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25
Transit Point		24		24		24		24
Local Rate—Transit Point to Destination		19		17		18		19
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		43		41		42		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)		27 <sup>1</sup> / <sub>4</sub>		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuitry via Transit Point (Miles) vs. PRR Direct (Percentage)	299 (33.15)		299 (35.30)		256 (29.56)		307 (35.13)	
Albany, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Albany, N. Y.	813		813		813		813	
NYCRR—Albany, N. Y. to 60th St., New York, N. Y.	151		151		151		151	
PRR—Jersey City, N. J. to Destination	219		164		41		260	
Total	1183		1128		1005		1224	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26 <sup>3</sup> / <sub>4</sub>		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25
Transit Point		25		25		25		25
Local Rate—Transit Point to Destination		21		21		17		(*)20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		46		46		42		45
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)		27 <sup>1</sup> / <sub>4</sub>		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuitry via Transit Point (Miles) vs. PRR Direct (Percentage)	281 (31.15)		281 (33.18)		139 (16.05)		350 (40.05)	
(*)—Applies via Newberry Jet., Pa.								

(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION					
	Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
	Miles	Rate	Miles	Rate	Miles	Rate
BATAVIA, N. Y. (NYCRR)						
NYCRR—Chicago, Ill. to Batavia, N. Y.	806		806		806	
NYCRR—Batavia, N. Y. to Newberry Jet., Pa.	175		175		175	
PRR—Newberry Jet., Pa. to Destination	86		86			
	79		55			
					42	
					158	
Total	46		1122		1181	
Reshipping Rate (Domestic) Chicago, Ill. to:						
Destination		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25
Transit Point		24		24		24
Local Rate—Transit Point to Destination		17		18		19
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		41		42		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	47		866		874	
Circuitry via Transit Point (Miles) vs. PRR Direct (Percentage)	99 (30)		256 (29.56)		307 (35.13)	
CAYUGA, N. Y. (NYCRR)						
NYCRR—Chicago, Ill. to Cayuga, N. Y.	43		813		813	
NYCRR—Cayuga, N. Y. to Newberry Jet., Pa.	51		151		151	
PRR—Newberry Jet., Pa. to Destination	64		41		260	
Total	28		1005		1224	
Reshipping Rate (Domestic) Chicago, Ill. to:						
Destination		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25
Transit Point		25		25		25
Local Rate—Transit Point to Destination		21		17		(*)20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		46		42		45
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	47		866		874	
Circuitry via Transit Point (Miles) vs. PRR Direct (Percentage)	81 (18)		139 (16.05)		350 (40.05)	

TRANSIT POINT	DESTINATION							
	Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
BATAVIA, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Batavia, N. Y.	559		559		559		559	
NYCRR—Batavia, N. Y. to Newberry Jet., Pa.	239		239		239		239	
PRR—Newberry Jet., Pa. to Destination	280		225		244		253	
Total	1078		1023		1042		1051	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26 <sup>3</sup> / <sub>4</sub>		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25
Transit Point		23		23		23		23
Local Rate—Transit Point to Destination		22		22		18		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		45		45		41		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)		27 <sup>1</sup> / <sub>4</sub>		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuitry via Transit Point (Miles) vs. PRR Direct (Percentage)	176 (19.51)		176 (20.78)		176 (20.32)		177 (20.25)	
CAYUGA, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Cayuga, N. Y.	646		646		646		646	
NYCRR—Cayuga, N. Y. to Newberry Jet., Pa.	181		181		181		181	
PRR—Newberry Jet., Pa. to Destination	280		225		244		253	
Total	1107		1052		1071		1080	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26 <sup>3</sup> / <sub>4</sub>		26 <sup>3</sup> / <sub>4</sub>		26 <sup>1</sup> / <sub>2</sub>		25
Transit Point		23		23		23		23
Local Rate—Transit Point to Destination		21		21		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		44		44		40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2c per 100 Pounds (Not Effective—Shown for Comparison Only)		27 <sup>1</sup> / <sub>4</sub>		27 <sup>1</sup> / <sub>4</sub>		27		25 <sup>1</sup> / <sub>2</sub>
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuitry via Transit Point (Miles) vs. PRR Direct (Percentage)	205 (22.73)		205 (24.20)		205 (23.67)		206 (23.57)	



(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION			
	Salisbury, Md.	Dover, Del.	Jamesburg, N. J.	Popes Creek, Md.
Manheim, Pa. (RDG. CO.)	Miles	Miles	Miles	Miles
ERIE RR—Chicago, Ill. to Newberry Jct., Pa.	806	806	806	806
RDG. CO.—Newberry Jct., Pa. to Manheim, Pa.	175	175	175	175
RDG. CO.—Manheim, Pa. to Belmont, Pa.	86	86	86	86
PRR—Belmont, Pa. to Destination	134	79	55	42
RDG. CO.—Manheim, Pa. to Harrisburg, Pa.	.....	.....	.....	158
PRR—Harrisburg, Pa. to Destination	.....	.....	.....	.....
Total	1201	1146	1122	1181
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26¾	26¾	26½	25
Transit Point	24	24	24	24
Local Rate—Transit Point to Destination	19	17	18	19
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	43	41	42	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27¼	27¼	27	25½
PRR Distance—Chicago, Ill. to Destination	902	847	866	874
Circuity via Transit Point (Miles) vs. PRR Direct (Percentage)	299 33.15	299 35.30	256 29.56	307 35.13
Albany, N. Y. (NYCRR)				
NYCRR—Chicago, Ill. to Albany, N. Y.	813	813	813	813
NYCRR—Albany, N. Y. to 60th St., New York, N. Y.	151	151	151	151
PRR—Jersey City, N. J. to Destination	219	164	41	260
Total	1183	1128	1005	1224
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26¾	26¾	26½	25
Transit Point	25	25	25	25
Local Rate—Transit Point to Destination	21	21	17	(*)20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	46	46	42	45
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27¼	27¼	27	25½
PRR Distance—Chicago, Ill. to Destination	902	847	866	874
Circuity via Transit Point (Miles) vs. PRR Direct (Percentage)	281 31.15	281 33.18	139 16.05	350 40.05

(\*)—Applies via Newberry Jct., Pa.

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(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION			
	Jamesburg, N. J.	Popes Creek, Md.	Jamesburg, N. J.	Popes Creek, Md.
BATAVIA, N. Y. (NYCRR)	Miles	Miles	Miles	Miles
NYCRR—Chicago, Ill. to Batavia, N. Y.	806	806	806	806
NYCRR—Batavia, N. Y. to Newberry Jct., Pa.	175	175	175	175
PRR—Newberry Jct., Pa. to Destination	86	42	86	42
Total	1122	1181	1122	1181
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26½	25	26½	25
Transit Point	24	24	24	24
Local Rate—Transit Point to Destination	18	19	18	19
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	42	43	42	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27	25½	27	25½
PRR Distance—Chicago, Ill. to Destination	866	874	866	874
Circuity via Transit Point (Miles) vs. PRR Direct (Percentage)	256 29.56	307 35.13	256 29.56	307 35.13
CAYUGA, N. Y. (NYCRR)				
NYCRR—Chicago, Ill. to Cayuga, N. Y.	813	813	813	813
NYCRR—Cayuga, N. Y. to Newberry Jct., Pa.	151	151	151	151
PRR—Newberry Jct., Pa. to Destination	41	260	41	260
Total	1005	1224	1005	1224
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26½	25	26½	25
Transit Point	25	25	25	25
Local Rate—Transit Point to Destination	17	(*)20	17	(*)20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	42	45	42	45
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27	25½	27	25½
PRR Distance—Chicago, Ill. to Destination	866	874	866	874
Circuity via Transit Point (Miles) vs. PRR Direct (Percentage)	139 16.05	350 40.05	139 16.05	350 40.05

TRANSIT POINT	DESTINATION			
	Salisbury, Md.	Dover, Del.	Jamesburg, N. J.	Popes Creek, Md.
BATAVIA, N. Y. (NYCRR)	Miles	Miles	Miles	Miles
NYCRR—Chicago, Ill. to Batavia, N. Y.	559	559	559	559
NYCRR—Batavia, N. Y. to Newberry Jct., Pa.	239	239	239	239
PRR—Newberry Jct., Pa. to Destination	280	225	244	253
Total	1078	1023	1042	1051
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26¾	26¾	26½	25
Transit Point	23	23	23	23
Local Rate—Transit Point to Destination	22	22	18	20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	45	45	41	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27¼	27¼	27	25½
PRR Distance—Chicago, Ill. to Destination	902	847	866	874
Circuity via Transit Point (Miles) vs. PRR Direct (Percentage)	176 19.51	176 20.78	176 20.32	177 20.25
CAYUGA, N. Y. (NYCRR)				
NYCRR—Chicago, Ill. to Cayuga, N. Y.	646	646	646	646
NYCRR—Cayuga, N. Y. to Newberry Jct., Pa.	181	181	181	181
PRR—Newberry Jct., Pa. to Destination	280	225	244	253
Total	1107	1052	1071	1080
Reshipping Rate (Domestic) Chicago, Ill. to:				
Destination	26¾	26¾	26½	25
Transit Point	23	23	23	23
Local Rate—Transit Point to Destination	21	21	17	20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	44	44	40	43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	27¼	27¼	27	25½
PRR Distance—Chicago, Ill. to Destination	902	847	866	874
Circuity via Transit Point (Miles) vs. PRR Direct (Percentage)	205 22.73	205 24.20	205 23.67	206 23.57



(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	DESTINATION							
	Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Geneva, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Geneva, N. Y.	632		632		632		632	
NYCRR—Geneva, N. Y. to Newberry Jet., Pa.	166		166		166		166	
PRR—Newberry Jet., Pa. to Destination	280		225		244		253	
Total	1078		1023		1042		1051	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26¾		26½		25
Transit Point		23		23		23		23
Local Rate—Transit Point to Destination		21		21		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		44		44		40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27¼		27		25½
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuity via Transit Point {Miles	176		176		176		177	
vs. PRR Direct {Percentage	19.51		20.78		20.32		20.25	
Kingston, N. Y. (NYC-WS)								
NYCRR—Chicago, Ill. to Kingston, N. Y.	860		860		860		860	
NYCRR—Kingston, N. Y. to Jersey City, N. J.	92		92		92		92	
PRR—Jersey City, N. J. to Destination	219		164		41		260	
Total	1171		1116		993		1212	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26¾		26½		25
Transit Point		26		26		26		26
Local Rate—Transit Point to Destination		21		21		17		27
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		47		47		43		53
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27¼		27		25½
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuity via Transit Point {Miles	269		269		127		338	
vs. PRR Direct {Percentage	29.82		31.76		14.67		38.67	

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(ALL RATES IN CENTS PER 100 POUNDS)

TRANSIT POINT	ESTINATION							
	Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.			
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Martisco, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Martisco, N. Y.			632		632			
NYCRR—Martisco, N. Y. to Newberry Jet., Pa.			166		166			
PRR—Newberry Jet., Pa. to Destination			244		253			
Total			1042		1051			
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26½		25		
Transit Point		23		23		23		
Local Rate—Transit Point to Destination		21		17		20		
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		44		40		43		
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27		25½		
PRR Distance—Chicago, Ill. to Destination			866		874			
Circuity via Transit Point {Miles			176		177			
vs. PRR Direct {Percentage			20.32		20.25			
North Tonawanda, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to No. Tonawanda, N. Y.			860		860			
NYCRR—No. Tonawanda, N. Y. to Newberry Jet., Pa.			92		92			
PRR—Newberry Jet., Pa. to Destination			41		260			
Total			993		1212			
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26½		25		
Transit Point		26		26		26		
Local Rate—Transit Point to Destination		21		17		27		
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		47		43		53		
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27		25½		
PRR Distance—Chicago, Ill. to Destination			866		874			
Circuity via Transit Point {Miles			127		338			
vs. PRR Direct {Percentage			14.67		38.67			

TRANSIT POINT	DESTINATION							
	Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Martisco, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Martisco, N. Y.	672		672		672		672	
NYCRR—Martisco, N. Y. to Newberry Jet., Pa.	207		207		207		207	
PRR—Newberry Jet., Pa. to Destination	280		225		244		253	
Total	1159		1104		1123		1132	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26¾		26½		25
Transit Point		23		23		23		23
Local Rate—Transit Point to Destination		21		21		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		44		44		40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27¼		27		25½
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuity via Transit Point {Miles	257		257		257		258	
vs. PRR Direct {Percentage	28.49		30.34		29.68		29.52	
North Tonawanda, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to No. Tonawanda, N. Y.	538		538		538		538	
NYCRR—No. Tonawanda, N. Y. to Newberry Jet., Pa.	275		275		275		275	
PRR—Newberry Jet., Pa. to Destination	280		225		244		253	
Total	1093		1038		1057		1066	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26¾		26½		25
Transit Point		20		20		20		20
Local Rate—Transit Point to Destination		22		22		18		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		42		42		38		40
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27¼		27		25½
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuity via Transit Point {Miles	191		191		191		192	
vs. PRR Direct {Percentage	21.18		22.55		22.06		21.97	



(ALL RATES IN CENTS PER 100 POUNDS)

## DESTINATION

TRANSIT POINT	Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Oswego, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Oswego, N. Y.....	667		667		667		667	
NYCRR—Oswego, N. Y. to Newberry Jct., Pa.....	279		279		279		279	
PRR—Newberry Jct., Pa. to Destination.....	280		225		244		253	
Total.....	1226		1171		1190		1199	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination.....		26¾		26¾		26½		25
Transit Point.....		23		23		23		23
Local Rate—Transit Point to Destination.....		21		21		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination.....		44		44		40		43
(In Effect at Present Date)								
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds.....		27¼		27¼		27		25½
(Not Effective—Shown for Comparison Only)								
PRR Distance—Chicago, Ill. to Destination.....	902		847		866		874	
Circuitry via Transit Point (Miles.....	324		324		324		325	
vs. PRR Direct (Percentage.....	35.92		38.25		37.41		37.19	
<hr/>								
Penn Yan, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Penn Yan, N. Y.....	651		651		651		651	
NYCRR—Penn Yan, N. Y. to Newberry Jct., Pa.....	159		159		159		159	
PRR—Newberry Jct., Pa. to Destination.....	280		225		244		253	
Total.....	1090		1035		1054		1063	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination.....		26¾		26¾		26½		25
Transit Point.....		23		23		23		23
Local Rate—Transit Point to Destination.....		21		21		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination.....		44		44		40		43
(In Effect at Present Date)								
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds.....		27¼		27¼		27		25½
(Not Effective—Shown for Comparison Only)								
PRR Distance—Chicago, Ill. to Destination.....	902		847		866		874	
Circuitry via Transit Point (Miles.....	188		188		188		189	
vs. PRR Direct (Percentage.....	20.84		22.20		21.71		21.62	

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## TRANSIT POINT

Pittsford, N. Y. (NYCRR)	
NYCRR—Chicago, Ill. to Pittsford, N. Y.	
NYCRR—Pittsford, N. Y. to Newberry Jet., Pa.	
PRR—Newberry Jet., Pa. to Destination	
Total	10
Reshipping Rate (Domestic) Chicago, Ill. to:	
Destination	
Transit Point	
Local Rate—Transit Point to Destination	
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	
PRR Distance—Chicago, Ill. to Destination	
Circuitry via Transit Point (Miles)	20
vs. PRR Direct (Percentage)	
Rochester (Kent St. Sta.), N. Y. (NYCRR)	
NYCRR—Chicago, Ill. to Rochester, N. Y.	
NYCRR—Rochester, N. Y. to Newberry Jet., Pa.	
PRR—Newberry Jet., Pa. to Destination	
Total	10
Reshipping Rate (Domestic) Chicago, Ill. to:	
Destination	
Transit Point	
Local Rate—Transit Point to Destination	
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)	
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	
PRR Distance—Chicago, Ill. to Destination	
Circuitry via Transit Point (Miles)	20
vs. PRR Direct (Percentage)	

(ALL RATES IN CENTS PER 100 POUNDS)

## DESTINATION

Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
Miles	Rate	Miles	Rate	Miles	Rate
667		667		667	
279		279		279	
225		244		253	
<u>1171</u>		<u>1190</u>		<u>1199</u>	
	26¾		26½		25
	23		23		23
	21		17		20
	44		40		43
	27¼		27		25½
847		866		874	
324		324		325	
3.25		37.41		37.19	
<hr/>					
651		651		651	
159		159		159	
225		244		253	
<u>1035</u>		<u>1054</u>		<u>1063</u>	
	26¾		26½		25
	23		23		23
	21		17		20
	44		40		43
	27¼		27		25½
847		866		874	
188		188		189	
20		21.71		21.62	

## DESTINATION

TRANSIT POINT	Salisbury, Md.	Dover, Del.	Jamesburg, N. J.	Popes Creek, Md.				
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Pittsford, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Pittsford, N. Y.	600		600		600		600	
NYCRR—Pittsford, N. Y. to Newberry Jct., Pa.	209		209		209		209	
PRR—Newberry Jct., Pa. to Destination	280		225		244		253	
Total	1089		1034		1053		1062	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26¾		26½		25
Transit Point		23		23		23		23
Local Rate—Transit Point to Destination		22		22		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		45		45		40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27¼		27		25½
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuitry via Transit Point								
vs. PRR Direct	{ Miles 187 Percentage 20.73		{ Miles 187 Percentage 22.08		{ Miles 187 Percentage 21.59		{ Miles 188 Percentage 21.51	
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Rochester (Kent St. Sta.), N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Rochester, N. Y.	591		591		591		591	
NYCRR—Rochester, N. Y. to Newberry Jct., Pa.	217		217		217		217	
PRR—Newberry Jct., Pa. to Destination	280		225		244		253	
Total	1088		1033		1052		1061	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26¾		26¾		26½		25
Transit Point		23		23		23		23
Local Rate—Transit Point to Destination		22		22		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		45		45		40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27¼		27¼		27		25½
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuitry via Transit Point								
vs. PRR Direct	{ Miles 186 Percentage 20.62		{ Miles 186 Percentage 21.96		{ Miles 186 Percentage 21.48		{ Miles 187 Percentage 21.40	



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(ALL RATES IN CENTS PER 100 POUNDS)

## DESTINATION

TRANSIT POINT	Salisbury, Md.		Dover, Del.		Jamesburg, N. J.		Popes Creek, Md.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Utica, N. Y. (NYCRR)								
NYCRR—Chicago, Ill. to Utica, N. Y.	722		722		722		722	
NYCRR—Utica, N. Y. to Newberry Jct., Pa.	270		270		270		270	
PRR—Newberry Jct., Pa. to Destination	280		225		244		253	
Total	1272		1217		1236		1245	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26 $\frac{3}{4}$		26 $\frac{3}{4}$		26 $\frac{1}{2}$		25
Transit Point		23 $\frac{1}{2}$		23 $\frac{1}{2}$		23 $\frac{1}{2}$		23 $\frac{1}{2}$
Local Rate—Transit Point to Destination		21		21		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		44 $\frac{1}{2}$		44 $\frac{1}{2}$		40 $\frac{1}{2}$		43 $\frac{1}{2}$
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27 $\frac{1}{4}$		27 $\frac{1}{4}$		27		25 $\frac{1}{2}$
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuity via Transit Point (Miles)	370		370		370		371	
vs. PRR Direct (Percentage)	41.02		43.68		42.73		42.45	

Horseheads, N. Y. (Erie RR)								
Erie RR—Chicago, Ill. to Horseheads, N. Y.	710		710		710		710	
Erie RR—Horseheads, N. Y. to Elmira, N. Y.	5		5		5		5	
PRR—Elmira, N. Y. to Destination	356		301		329		329	
Erie RR—Horseheads, N. Y. to Croxton (Marion), N. J.	....		....		273		....	
PRR—Croxton (Marion), N. J. to Destination	....		....		39		....	
Total	1071		1016		1022		1044	
Reshipping Rate (Domestic) Chicago, Ill. to:								
Destination		26 $\frac{3}{4}$		26 $\frac{3}{4}$		26 $\frac{1}{2}$		25
Transit Point		23		23		23		23
Local Rate—Transit Point to Destination		21		21		17		20
Combination of Chicago Reshipping Rate to Transit Point plus Local Rate from Transit Point to Destination (In Effect at Present Date)		44		44		40		43
Chicago Reshipping Rate to Destination plus Transit Charge of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)		27 $\frac{1}{4}$		27 $\frac{1}{4}$		27		25 $\frac{1}{2}$
PRR Distance—Chicago, Ill. to Destination	902		847		866		874	
Circuity via Transit Point (Miles)	169		169		156		170	
vs. PRR Direct (Percentage)	18.74		19.95		18.01		19.45	

CD-851(8)

## TRANSIT POINT

Waverly, N. Y. (Erie RR)	
Erie RR—Chicago, Ill. to Waverly, N. Y.	
Erie RR—Waverly, N. Y. to Elmira, N. Y.	
PRR—Elmira, N. Y. to Destination	
Erie RR—Waverly, N. Y. to Croxton (Marion), N. J.	
PRR—Croxton (Marion), N. J. to Destination	

Total	
Reshipping Rate (Domestic) Chicago, Ill. to:	
Destination	
Transit Point	
Local Rate—Transit Point to Destination	

Combination of Chicago Reshipping Rate to Transit P plus Local Rate from Transit Point to Destination (In Effect at Present Date)	
---	--

Chicago Reshipping Rate to Destination plus Transit Cha of 1/2¢ per 100 Pounds (Not Effective—Shown for Comparison Only)	
--	--

PRR Distance—Chicago, Ill. to Destination	
---	--

Circuity via Transit Point (Miles)	
vs. PRR Direct (Percentage)	

## Mileages

TAR

Pennsylvania R. R. I. C. C. 398
Delaware, Lackawanna & Western R. R. I. C. C. 22030
Lehigh Valley R. R. I. C. C. C-8325
Erie R. R. I. C. C. 19095
Erie R. R. I. C. C. A-5634
Pere Marquette Ry. I. C. C. 3761
Wabash Ry. I. C. C. 6442
Central R. R. of New Jersey I. C. C. 5033
New York, Chicago & St. Louis R. R. I. C. C. 5035
Reading Company I. C. C. 1110
Michigan Central R. R. I. C. C. 5196
New York Central R. R. I. C. C. LS-1536
New York Central R. R. I. C. C. NYC-16802
Baltimore & Ohio R. R. I. C. C. 23392

### DESTINATION

TRANSIT POINT

### DESTINATION

Total

Circuitry via Transit Point vs. PRR Direct	Miles .....
	Percentage .....

 $27\frac{1}{4}$        $27\frac{1}{4}$       27       $25\frac{1}{2}$ 

Circuitry via Transit Point vs. PRR Direct	Miles .....
	Percentage .....

TARIFF AUTHORITY

## Rates

Agent B. T. Jones' I. C. C. 3356  
Agent B. T. Jones' I. C. C. 3300  
Central R. R. of New Jersey I. C. C. G-5506  
Delaware, Lackawanna & Western R. R. I. C. C. 23917  
Lehigh Valley R. R. I. C. C. C-9020  
Erie R. R. I. C. C. 19801  
Agent W. S. Curlett's I. C. C. A-334  
Agent W. S. Curlett's I. C. C. A-335  
Agent W. S. Curlett's I. C. C. A-332  
Agent W. S. Curlett's I. C. C. A-331  
Agent W. S. Curlett's I. C. C. A-714  
New York Central R. R. I. C. C. NYC-17046



Statement Showing Basis for Charges on Grain, Carloads, from Chicago, Ill., P. R. R., when Mixed in Transit into Feed at Eastern Points on P. R. R. and Forwarded to Eastern Destinations, for the Deliveries Indicated, Rates are in Effect via Various Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W. M. Ry. I. C. C. No. 8662

FROM: CHICAGO, ILL.

REPRESENTATIVE DESTINATIONS	TRANSIT AT BEDFORD, PA., P. R. R.			TRANSIT AT GREENCASTLE, PA., P. R. R.			TRANSIT AT PHILADELPHIA, PA., P. R. R.
	Route to Destination (Interchange Point Between P. R. R. and Destination Carrier)		Basis for Settlement of Charges from Chicago, Ill., PRR, to Destination when Transited at Bedford, Pa., PRR	Route to Destination (Interchange Point Between P. R. R. and Destination Carrier)		Basis for Settlement of Charges from Chicago, Ill., PRR, to Destination when Transited at Greencastle, Pa., PRR	Route to Destination (Interchange Point Between P. R. R. and Destination Carrier)
	From Chicago, Ill. (PRR)	From P. R. R. Transit Point (Bedford, Pa.)		From Chicago, Ill. (PRR)	From P. R. R. Transit Point (Greencastle, Pa.)		
<b>POINTS ON CRR of NJ</b>							
Jersey City, N. J.	Nanticoke, Pa.	Oak Island Jct., N. J.		Nanticoke, Pa.	Oak Island Jct., N. J.		Nanticoke, Pa.
Plainfield, N. J.	"	Flemington, N. J.		"	Flemington, N. J.		"
Highbridge, N. J.	"			"			"
Hampton, N. J.	"	Nanticoke, Pa.		"			"
Bethlehem, Pa.	"	"		"			"
Mauch Chunk, Pa.	"	"		"	Phillipsburg, N. J.		"
Wilkes Barre, Pa.	"	"		"			"
Scranton, Pa.	"	"	Thru rate origin to destination plus transit charge of 1/2¢ per 100 pounds, and plus out of route charge of 3¢ per 100 lbs.	"	Nanticoke, Pa.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 pounds and plus out of route charge of 4 1/2¢ per 100 lbs.	"
Red Bank, N. J.	"	Farmingdale, N. J.		"	Farmingdale, N. J.		"
Eatontown, N. J.	"	"		"	"		"
Lakehurst, N. J.	"	Whitings, N. J.		"	"		"
Barnegat, N. J.	"			"	Whitings, N. J.		"
Vineland, N. J.	"	Pavonia-PRSL- Bridgeton, N. J.		"	Pavonia-PRSL- Bridgeton, N. J.		"
Seabrook, N. J.	"	"		"	"		"
Port Norris, N. J.	"	"		"	"		"
<b>POINTS ON D&amp;HRR</b>							
Pittston, Pa.	Wilkes Barre, Pa.	Wilkes Barre, Pa.		Wilkes Barre, Pa.	Wilkes Barre, Pa.		Wilkes Barre, Pa.
Carbondale, Pa.	"	"		"	"		"
Honesdale, Pa.	"	"	Thru rate origin to destination plus transit charge of 1/2¢ per 100 pounds and plus out of route charge of 3¢ per 100 lbs.	"	"	Thru rate origin to destination plus transit charge of 1/2¢ per 100 pounds and plus out of route charge of 4 1/2¢ per 100 lbs.	"
Nineveh, N. Y.	"	"		"	"		"
Binghamton, N. Y.	"	"		"	"		"
Oneonta, N. Y.	"	"		"	"		"
Albany, N. Y.	"	"		"	"		"
Schenectady, N. Y.	"	"		"	"		"
Mechanicville, N. Y.	"	"		"	"		"
Saratoga Springs, N. Y.	"	"		"	"		"
Lake George, N. Y.	"	"		"	"		"
Whitehall, N. Y.	"	"		"	"		"
Plattsburg, N. Y.	"	"		"	"		"
Rouses Point, N. Y.	"	"		"	"		"
Lake Placid, N. Y.	"	"		"	"		"

FROM: CHICAGO, ILL.

[illegible]



Statement Showing Basis for Charges on Grain, Carloads, from Chicago, Ill., P. R. R., when Mixed in Transit into Feed at Eastern Points on P. R. R. and Forwarded to Eastern Destination Destinations, for the Deliveries Indicated, Rates are in Effect via Various Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W. M. Ry. I. C. C. No. 8662.

(NOTE:—When movement is via P. R. R. Direct from C. F. A. Points, Including Chicago, Ill., to P. R. R. Destinations on the Del-Mar-Va Division Transit at P. R. R. Transit Points Shown on this Exhibit is Subject to Out of Route or Back-Haul Charge.)

FROM: CHICAGO, ILL.

Sheet # 2

Ill., P. R. R., when Mixed in Transit into Feed at Eastern Points on P. R. R. and Forwarded to Eastern Destinations on Roads other than the P. R. R., to which various Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W. M. Ry. I. C. C. No. 8662, without Out of Route or Back-Haul Charge.

ment is via P. R. R. Direct from C. F. A. Points, Including Chicago, Ill., to P. R. R. Destinations on the Transit at P. R. R. Transit Points Shown on this Exhibit is Subject to Out of Route or Back-Haul Charge.)

FROM: CHICAGO, ILL.

[illegible]



Statement Showing Basis for Charges on Grain, Carloads, from Chicago, Ill., P. R. R., when Mixed in Transit into Feed at Eastern Points on P. R. R. and Forwarded to Eastern Destinations, for the Deliveries Indicated, Rates are in Effect via Various Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W. M. Ry. I. C. C. No. 8662, without Out of Route or Back-Haul Charge.

(NOTE:—When movement is via P. R. R. Direct from C. F. A. Points, Including Chicago, Ill., to P. R. R. Destinations on the Del-Mar-Va Division Transit at P. R. R. Transit Points Shown on this Exhibit is Subject to Out of Route or Back-Haul Charge.)

FROM: CHICAGO, ILL.

REPRESENTATIVE DESTINATIONS	TRANSIT AT BEDFORD, PA., P. R. R.			TRANSIT AT GREENCASTLE, PA., P. R. R.			
	Route to Destination (Interchange Point Between P. R. R. and Destination Carrier)		Basis for Settle- ment of Charges from Chicago, Ill., PRR, to Destina- tion when Trans- ited at Bedford, Pa., PRR	Route to Destination (Interchange Point Between P. R. R. and Destination Carrier)		Basis for Settle- ment of Charges from Chicago, Ill., PRR, to Destina- tion when Trans- ited at Green- castle, Pa., PRR	Route Between
	From Chicago, Ill. (PRR)	From P. R. R. Transit Point (Bedford, Pa.)		From Chicago, Ill. (PRR)	From P. R. R. Transit Point (Greencastle, Pa.)		From
POINTS ON READING CO. (Continued)							
Pennsburg, Pa.....	Harrisburg, Pa.	Harrisburg, Pa.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 lbs. and plus out of route charge of 3¢ per 100 lbs.	Harrisburg, Pa.	Harrisburg, Pa.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 lbs. and plus out of route charge of 4½¢ per 100 lbs.	Harrisburg, Pa.
Newtown, Pa.....	"	"		"	"		"
Suplee, Pa.....	No Route	"		No Route	"		No Route
Elsmere Jct., Del.....	No Route	"	Combination	No Route	"	Combination	No Route
POINTS ON STATEN ISLAND RAPID TRANSIT RY.							
Elm Park, N. Y.....	Linden Jct., N. J.	Linden Jct., N. J.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 lbs. and plus out of route charge of 3¢ per 100 lbs.	Linden Jct., N. J.	Linden Jct., N. J.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 lbs. and plus out of route charge of 4½¢ per 100 lbs.	Linden Jct., N. J.
West New Brighton, N. Y.....	"	"		"	"		"
Tompkinsville, N. Y.....	"	"		"	"		"
Grasmere, N. Y.....	"	"		"	"		"
Annadale, N. Y.....	"	"		"	"		"
Tottenville, N. Y.....	"	"		"	"		"

Basis for charges on Grain, CL, from Chicago, Ill., destined points on the Del-Mar-Va Division of the P. R. R. when transited at Bedford, Pa., per PRR ICC 2442, into Mixed Feed, CL, when moving via PRR direct:

Through rate from Chicago, Ill., to Del-Mar-Va Division destination plus transit charge of 1/2¢ per 100 pounds and plus out of route or back-haul charge of 3.0¢ per 100 pounds.

Out of Route Distances:

To	Miles	
Nanticoke, Pa.	73	
Wilkes Barre, Pa.	73	Per
Long Island City, N. Y.	73	PRR ICC
Harrisburg, Pa.	73	398
Linden Jet., N. J.	73	

Basis for charges on Grain, CL, from Chicago, Ill., destined points on the Del-Mar-Va Division of the P. R. R. when transited at Greencastle, Pa., per PRR ICC 2220, into Mixed Feed, CL, when moving via PRR direct:

Through rate from Chicago, Ill., to Del-Mar-Va Division destination plus transit charge of 1/2¢ per 100 pounds and plus out of route or back-haul charge of 4 1/2¢ per 100 pounds.

Out of Route Distances:

To	Miles	
Nanticoke, Pa.	191	
Wilkes Barre, Pa.	191	Per
Long Island City, N. Y.	127	PRR ICC
Harrisburg, Pa.	127	398
Linden Jet., N. J.	127	

NOTE:—Route via which Hagerstown, Md., is directly intermediate on movement from Chicago, Ill., to destinations shown on this exhibit is the "Central States Despatch" Route, viz., B. & O. R. R. Routing Guide, B. & O. R. R. I. C. C. No. 22482.

Statement Showing Basis for Charges on Grain, Carloads, from Chicago, Ill., P. R. R., when Mixed in Transit into Feed at Eastern Points on P. R. R. and Forwarded to Eastern Destinations on Roads other than the P. R. R., to which Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W. M. Ry. I. C. C. No. 8662, without Out of Route or Back-Haul Charge.

(NOTE:—When movement is via P. R. R. Direct from C. F. A. Points, Including Chicago, Ill., to P. R. R. Destinations on the Del-Mar-Va Division Transit at P. R. R. Transit Points Shown on this Exhibit is Subject to Out of Route or Back-Haul Charge.)

FROM: CHICAGO, ILL.

P. R. R.	TRANSIT AT GREENCASTLE, PA., P. R. R.			TRANSIT AT LITTLESTOWN, PA., P. R. R.		
	Route to Destination (Interchange Point Between P. R. R. and Destination Carrier)		Basis for Settlement of Charges from Chicago, Ill., PRR, to Destination when Transited at Greencastle, Pa., PRR	Route to Destination (Interchange Point Between P. R. R. and Destination Carrier)		Basis for Settlement of Charges from Chicago, Ill., PRR, to Destination when Transited at Littlestown, Pa., PRR
	From Chicago, Ill. (PRR)	From P. R. R. Transit Point (Greencastle, Pa.)		From Chicago, Ill. (PRR)	From P. R. R. Transit Point (Littlestown, Pa.)	
	Harrisburg, Pa.	Harrisburg, Pa.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 lbs. and plus out of route charge of 3¢ per 100 lbs.	Harrisburg, Pa.	Harrisburg, Pa. Belmont, Pa.	Combination
	No Route	"	Combination	No Route	Harrisburg, Pa. Wilmington, Del.	
	Linden Jet., N. J.	Linden Jet., N. J.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 lbs. and plus out of route charge of 4 1/2¢ per 100 lbs.	Linden Jet., N. J.	Linden Jet., N. J.	Thru rate origin to destination plus transit charge of 1/2¢ per 100 lbs. and plus out of route charge of 6¢ per 100 lbs.
	"	"		"	"	
	"	"		"	"	
	"	"		"	"	
	"	"		"	"	

Ill., destined points when transited at Bedford, Pa., per PRR ICC 2442, into Mixed Feed, CL, when moving via PRR direct:

Through rate from Chicago, Ill., to Del-Mar-Va Division destination plus transit charge of 1/2¢ per 100 pounds and plus out of route or back-haul charge of 3.0¢ per 100 pounds.

Basis for charges on Grain, CL, from Chicago, Ill., destined points on the Del-Mar-Va Division of the P. R. R. when transited at Greencastle, Pa., per PRR ICC 2220, into Mixed Feed, CL, when moving via PRR direct:

Through rate from Chicago, Ill., to Del-Mar-Va Division destination plus transit charge of 1/2¢ per 100 pounds and plus out of route or back-haul charge of 4 1/2¢ per 100 pounds.

Out of Route Distances:

To	Miles	
Nanticoke, Pa.	191	
Wilkes Barre, Pa.	191	Per
Long Island City, N. Y.	127	PRR ICC
Harrisburg, Pa.	127	398
Linden Jet., N. J.	127	

Basis for charges on Grain, CL, from Chicago, Ill., destined points on the Del-Mar-Va Division of the P. R. R. when transited at Littlestown, Pa., per PRR ICC 2220 into Mixed Feed, CL, when moving via PRR direct:

Through rate from Chicago, Ill., to Del-Mar-Va Division destination plus transit charge of 1/2¢ per 100 pounds and plus out of route or back-haul charge of 6¢ per 100 pounds.

Out of Route Distances:

To	Miles	
Nanticoke, Pa.	169	
Wilkes-Barre, Pa.	169	Per
Long Island City, N. Y.	68	PRR ICC
Linden Jet., N. J.	68	398

NOTE:—Route via which Hagerstown, Md., is directly intermediate on movement from Chicago, Ill., to destinations shown on this exhibit is the "Central States Despatch" Route, viz., B. & O. R. R., Cherry Run, W. Va., W. M. Ry., B. & O. R. R. Routing Guide, B. & O. R. R. I. C. C. No. 22482.



## EXHIBIT No 57

[fol. 784]

Statement Showing Basis for Charges on Grain, Carloads, from Chicago, Ill., P.R.R., when Mixed in Transit into Feed at Wilmington, Del. on P.R.R. and Forwarded to Eastern other than the P.R.R., to which Destinations, for the Deliveries Indicated, Rates are in Effect via Various Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W.M.Ry. I.C.C. No. 8662, without Out of Route or Back-Haul Charge

## FROM: CHICAGO, ILL.

REPRESENTATIVE DESTINATIONS	TRANSIT AT WILMINGTON, DEL., P.R.R.		Basis for Settle- ment of Charges from Chicago, Ill., PRR, to Destina- tion when Trans- ited at Wilming- ton, Del., PRR	REPRESENTATIVE DESTINATIONS	TRANSIT AT WILMINGTON	
	Route to Destination (Interchange Point Between P.R.R. and Destination Carrier)				Route to Destination (Interchange Po Between P.R.R. and Destination Carri	
	From Chicago, Ill. (PRR)	From Transit Point (Wilmington, Del.,PRR)			From Chicago, Ill. (PRR)	From Transit (Wilmington, Del
POINTS ON CRRofNJ				POINTS ON L.I.R.R.		
Jersey City, N. J.	Nanticoke, Pa.	Oak Island Jet., N. J.	Combination	Long Island City, N. Y.	Long Island City, NY	Long Island City
Plainfield, N. J.	"	Flemington, N. J.		Jamaica, N. Y.	"	"
Highbridge, N. J.	"	"		Hicksville, N. Y.	"	"
Hampton, N. J.	"	"		Farmingdale, N. Y.	"	"
Bethlehem, Pa.	"	Phillipsburg, N. J.		Riverhead, N. Y.	"	"
Mauch Chunk, Pa.	"	"		Greenport, N. Y.	"	"
Wilkes Barre, Pa.	"	Nanticoke, Pa.		Eastport, N. Y.	"	"
Scranton, Pa.	"	"		Montauk, N. Y.	"	"
Red Bank, N. J.	"	Farmingdale, N. J.				
Eatontown, N. J.	"	"				
Lakehurst, N. J.	"	"				
Barneget, N. J.	"	Whitings, N. J.				
Vineland, N. J.	"	Pavonia-PRSL- Bridgeton				
Seabrook, N. J.	"	"				
Port Norris, N. J.	"	"				
POINTS ON D&HRR				POINTS ON READING CO.		
Pittston, Pa.	Wilkes Barre, Pa.	Wilkes Barre, Pa.	Combination	Philadelphia, Pa.	Harrisburg, Pa.	Belmont, Pa.
Carbondale, Pa.	"	"		Phoenixville, Pa.	"	"
Honesdale, Pa.	"	"		Reading, Pa.	"	"
Nineveh, N. Y.	"	"		Pottsville, Pa.	"	"
Binghamton, N. Y.	"	"				
Oneonta, N. Y.	"	"		Chester, Pa.	"	"
Albany, N. Y.	"	"		Downington, Pa.	"	"
Schenectady, N. Y.	"	"		Boyertown, Pa.	"	"
Mechanicville, N. Y.	"	"		Lebanon, Pa.	"	"
Saratoga Springs, N. Y.	"	"				
Lake George, N. Y.	"	"				
Whitehall, N. Y.	"	"				
Plattsburg, N. Y.	"	"				
Rouses Point, N. Y.	"	"				
Lake Placid, N. Y.	"	"				
TARIFF AUTHORITY:	P.R.R. I.C.C. 2442					
				Kutztown, Pa.		
				Allentown, Pa.		Belmont, Pa.
				Minersville, Pa.		"
				Tuscarora, Pa.		"
				Catasauqua, Pa.		"
				Rittenhouse, Gap. Pa.		"
				Pine Grove, Pa.		"
				Tower City, Pa.		"
				Flourtown, Pa.		"
				Sellersville, Pa.		"
				Bethlehem, Pa.		"
				TARIFF AUTHORITY:		P.R.R. I.C.C.

## EXHIBIT No 57

Ill., P.R.R., when Mixed in Transit into Feed at Wilmington, Del. on P.R.R. and Forwarded to Eastern Destinations on Roads, Rates are in Effect via Various Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W.M.Ry.

## FROM: CHICAGO, ILL.

REPRESENTATIVE DESTINATIONS	TRANSIT AT WILMINGTON, DEL., P.R.R.	
	Route to Destination (Interchange Point Between P.R.R. and Destination Carrier)	
	From Chicago, Ill. (PRR)	From Transit Point (Wilmington, Del., PRR)
<b>POINTS ON L.I.R.R.</b>		
Long Island City, N. Y.	Long Island City, NY	Long Island City, NY
Jamaica, N. Y.	"	"
Hicksville, N. Y.	"	"
Farmingdale, N. Y.	"	"
Riverhead, N. Y.	"	"
Greenport, N. Y.	"	"
Eastport, N. Y.	"	"
Montauk, N. Y.	"	"
<b>POINTS ON READING CO.</b>		
Philadelphia, Pa.	Harrisburg, Pa.	Belmont, Pa.
Phoenixville, Pa.	"	"
Reading, Pa.	"	"
Pottsville, Pa.	"	"
Chester, Pa.	"	"
Downington, Pa.	"	"
Boyertown, Pa.	"	"
Lebanon, Pa.	"	"
Middletown, Pa.	"	Harrisburg, Pa.
<b>TARIFF AUTHORITY:</b>	P.R.R. I.C.C. 2442	

[fol. 785]

Statement Showing Basis for Charges on Grain, Carloads, from Chicago, Ill., P.R.R., when Mixed in Transit into Feed at Wilmington, Del. on P.R.R. and Forwarded to Eastern Destinations on Roads other than the P.R.R., to which Destinations, for the Deliveries Indicated, Rates are in Effect via Various Routes from Chicago, Ill., via which Transit is Available at Hagerstown, Md., per W.M.Ry. I.C.C. No. 8662, without Out of Route or Back-Haul Charge

FROM: CHICAGO, ILL.

REPRESENTATIVE DESTINATIONS	TRANSIT AT WILMINGTON, DEL., P.R.R.		
	Route to Destination (Interchange Point Between P.R.R. and Destination Carrier)		Basis for Settle- ment of Charges from Chicago, Ill., PRR, to Destina- tion when Trans- ited at Wilming- ton, Del., PRR
	From Chicago, Ill. (PRR)	From Transit Point (Wilmington, Del.,PRR)	
POINTS ON READING CO. (Continued)			(1) Thru rate origin to des- tination plus transit charge of 1½¢ per 100 lbs. plus out of route charge of 9¢ per 100 lbs.
Doylestown, Pa.....	Harrisburg, Pa.	Belmont, Pa.	
New Hope, Pa.....	"	"	
Trenton, N. J.....	"	"	
Manville, N. J.....	"	"	
Port Reading, N. J.....	"	"	
Manheim, Pa.....	"	"	
Columbia, Pa.....	"	"	
Slatington, Pa.....	"	"	
Girardville, Pa.....	"	"	
Catawissa, Pa.....	"	"	
Pennsburg, Pa.....	"	"	
Newtown, Pa.....	"	"	
Suplee, Pa.....	No Route	Wilmington, Del.	Combination
Elsmere Jct., Del.....	"	"	
POINTS ON STATEN ISLAND RAPID TRANSIT RY.			Thru rate origin to destination plus transit charge of 1½¢ per 100 pounds
Elm Park, N. Y.....	Linden Jct., N. J.	Linden Jct., N. J.	
West New Brighton, N. Y.....	"	"	
Tompkinsville, N. Y.....	"	"	
Grasmere, N. Y.....	"	"	
Annadale, N. Y.....	"	"	
Tottenville, N. Y.....	"	"	
TARIFF AUTHORITY:	P.R.R. I.C.C. 2442		

NOTE

Route via which Hagerstown, Md., is directly intermediate destinations shown on this exhibit is the "Central States Express Run, W. Va., W.M.Ry., Shippensburg, Pa., Reading Co., and C. & P. Co. Routing Guide, B.&O.R.R. I.C.C. No. 22482.

(1)—Out of route distance is 204 miles per P.R.R. I.C.C. 398.

NATIVE ONS	TRANSIT AT WILMINGTON, DEL., P.R.R.		Basis for Settle- ment of Charges from Chicago, Ill., PRR, to Destina- tion when Trans- ited at Wilming- ton, Del., PRR
	Route to Destination (Interchange Point Between P.R.R. and Destination Carrier)		
	From Chicago, Ill. (PRR)	From Transit Point (Wilmington, Del.,PRR)	
ING CO. l)	Harrisburg, Pa.	Belmont, Pa.	(1) Thru rate origin to des- tination plus transit charge of ½¢ per 100 lbs. plus out of route charge of 9¢ per 100 lbs.
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	No Route	Wilmington, Del.	Combination
.....	"	"	
FATEN TRANSIT			
.....	Linden Jct., N. J.	Linden Jct., N. J.	Thru rate origin to destination plus transit charge of ½¢ per 100 pounds
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
.....	"	"	
ITY:	P.R.R. I.C.C. 2442		

NOTE

Route via which Hagerstown, Md., is directly intermediate on movement from Chicago, Ill., to destinations shown on this exhibit is the "Central States Despatch" Route, viz., B.&O.R.R., Cherry Run, W. Va., W.M.Ry., Shippensburg, Pa., Reading Co., and Connections, as covered by B.&O.R.R. Routing Guide, B.&O.R.R. I.C.C. No. 22482.

(1)—Out of route distance is 204 miles per P.R.R. I.C.C. 398.

NOTE

Route via which Hagerstown, Md., is directly intermediate on movement from Chicago, Ill., to destinations shown on this exhibit is the "Central States Despatch" Route, viz., B.&O.R.R., Cherry Run, W. Va., W.M.Ry., Shippensburg, Pa., Reading Co., and Connections, as covered by B.&O.R.R. Routing Guide, B.&O.R.R. I.C.C. No. 22482.

(1)—Out of route distance is 204 miles per P.R.R. I.C.C. 398.

NOTE

Route via which Hagerstown, Md., is directly intermediate on movement from Chicago, Ill., to destinations shown on this exhibit is the "Central States Despatch" Route, viz., B.&O.R.R., Cherry Run, W. Va., W.M.Ry., Shippensburg, Pa., Reading Co., and Connections, as covered by B.&O.R.R. Routing Guide, B.&O.R.R. I.C.C. No. 22482.

(1)—Out of route distance is 204 miles per P.R.R. I.C.C. 398.



## EXHIBIT No. 58

Statement and Maps Showing Shortest Working (Tariff) and I.C.C. Docket No. 15879 Short Line Rate Making Miles and Routes between Chicago, Ill., and Representative Eastern Trunk Line Territory Points.

Between		Shortest Working (Tariff) Route		I.C.C. Docket No. 15879 Short Line Rate Making Miles and Route		
CHICAGO, ILL.					CFA-TL Gateway	Route to CFA-TL Gateway
And	Miles	Route		Miles		
Aberdeen, Md.....	795	P.R.R. Direct.....		780	Pittsburgh, Pa.....	P.R.R. Direct
Altoona, Pa.....	586	P.R.R. Direct.....		571	"	"
Bayway, N. J.....	886	S.I.R.T.Ry.-Linden Jct., N.J.-P.R.R.....		869	"	S.I.R.T.Ry.-Cranford Jct., N. J.-CRRNJ-Bethlehem, Pa.-L.V.R.
Binghamton, N. Y.....	708	D.L.&W.R.R.-Black Rock, N. Y.-Wabash Ry.....		697	Buffalo, N. Y.....	R.-East Penn Jct., Pa.-Rdg. Co.-Harrisburg, Pa.-P.R.R.
Bloomfield, N. J.....	895	D.L.&W.R.R.-Black Rock, N. Y.-Wabash Ry.....		874	Pittsburgh, Pa.....	D.L.&W.R.R.-Ithaca, N. Y.-L.V.R.R.-Depew, N. Y.-N.Y.C.R.R.
Bound Brook, N. J.....	876	CRRNJ-Haucks, Pa.-Rdg. Co.-Newberry Jct., Pa.-N.Y.C.				Erie R.R.-Mt. View, N. J.-D.L.&W.R.R.-Portland, Pa.-L.&N.
Bridgeton, N. J.....	871	R.R. (Via Clearfield, Pa.)		850	"	N.R.R.-Lizard Creek Jct., Pa.-L.V.R.R.-Packerton Jct., Pa.
Chester, Pa.....	821	P.R.S.L.-Pavonia, N. J.-P.R.R.....				CRNNJ-Haucks, Pa.-Rdg. Co.-Shamokin, Pa.-P.R.R.
Downington, Pa.....	790	P.R.R. Direct.....		856	"	CRRNJ-Bethlehem, Pa.-L.V.R.R.-East Penn Jct., Pa.-Rdg. Co.
Easton, Md.....	880	P.R.R. Direct.....				Harrisburg, Pa.-P.R.R.
Elmira, N. Y.....	651	D.L.&W.R.R.-Black Rock, N. Y.-Wabash Ry.....		804	"	P.R.S.L.-Pavonia, N. J.-P.R.R.
Harrisburg, Pa.....	717	P.R.R. Direct.....		775	"	P.R.R.-Chadd's Ford Jct., Pa.-Rdg. Co.-Coatesville, Pa.-P.R.R.
Lewistown, Pa.....	656	P.R.R. Direct.....		865	"	P.R.R. Direct.
Mt. Carmel, Pa.....	734	P.R.R. Direct.....		646	Buffalo, N. Y.....	P.R.R. Direct.
New York, N. Y.....	909	D.L.&W.R.R.-Black Rock, N. Y.-Wabash Ry.....		702	Pittsburgh, Pa.....	D.L.&W.R.R. Direct.
Northumberland, Pa....	707	P.R.R. Direct.....		641	"	P.R.R. Direct.
Philadelphia, Pa.....	825	P.R.R. Direct.....		719	"	P.R.R. Direct.
Phillipsburg, N. J.....	857	D.L.&W.R.R.-Black Rock, N. Y.-Wabash Ry.....		880	"	CRRNJ-Bethlehem, Pa.-L.V.R.R.-East Penn Jct., Pa.-Rdg. Co.
Reading, Pa.....	770	Rdg. Co.-Harrisburg, Pa.-P.R.R.....				Harrisburg, Pa.-P.R.R.
Salisbury, Md.....	902	P.R.R. Direct.....		692	Pittsburgh, Pa.....	P.R.R. Direct.
Scranton, Pa.....	765	D.L.&W.R.R.-Black Rock, N. Y.-Wabash Ry.....		814	"	P.R.R. Direct.
Trenton, N. J.....	844	P.R.R. Direct.....		808	"	L.V.R.R.-East Penn Jct., Pa.-Rdg. Co.-Harrisburg, Pa.-P.R.R.
Vineland, N. J.....	868	P.R.S.L.-Pavonia, N. J.-P.R.R.....		756	"	Rdg. Co.-Harrisburg, Pa.-P.R.R.
Williamsport, Pa.....	678	Rdg. Co.-Newberry Jct., Pa.-N.Y.C.R.R. (Via Clearfield, Pa.)		887	"	P.R.R. Direct.
Wilmington, Del.....	819	P.R.R. Direct.....		755	Buffalo, N. Y.....	P.R.R. Direct.
York, Pa.....	744	P.R.R. Direct.....		829	Pittsburgh, Pa.....	D.L.&W.R.R.-Ithaca, N. Y.-L.V.R.R.-Depew, N. Y.-N.Y.C.R.R.
				853	"	P.R.R. Direct.
				657	Stoneboro, Pa.....	P.R.S.L.-Pavonia, N. J.-P.R.R.
						P.R.R.-Newberry, Pa.-N.Y.C.R.R.-McElhattan, Pa.-P.R.R.-
						Rose, Pa.-N.Y.C.R.R.
				801	Pittsburgh, Pa.....	B.&O.R.R.-Elsmere Jct., Del.-Rdg. Co.-Coatesville, Pa.-P.R.R.
				729	Pittsburgh, Pa.....	P.R.R. Direct.

Statement and Maps Showing Shortest Working (Tariff) and I.C.C. Docket No. 15879 Short Line Rate Making Miles and Routes between Chicago, Ill., and Representative Eastern Trunk Line Territory Points.

Note 1—Transit now available at Hagerstown, Md., via Central States Despatch route for CRRNJ delivery.....													without out of route or back haul charge								
" 2—	"	"	"	"	"	"	"	"	"	"	"	"	CRRNJ and PRSL deliveries (PRSL via Rdg. Co.)	"	"	"	"	"	"	"	"
" 3—	"	"	"	"	"	"	"	"	"	"	"	"	RDG.CO delivery.....	"	"	"	"	"	"	"	"
" 4—	"	"	"	"	"	"	"	"	"	"	"	"	L.V.R.R. and RDG.CO. deliveries.....	"	"	"	"	"	"	"	"
" 5—	"	"	"	"	"	"	"	"	"	"	"	"	CRRNJ, DL&WRR and LVRR deliveries.....	"	"	"	"	"	"	"	"
" 6—	"	"	"	"	"	"	"	"	"	"	"	"	W.M.Ry. delivery.....	"	"	"	"	"	"	"	"
" 7—	"	"	"	"	"	"	"	"	"	"	"	"	D.&H.R.R. delivery.....	"	"	"	"	"	"	"	"
" 8—	"	"	"	"	"	"	"	"	"	"	"	"	D.L.&W.R.R. delivery.....	"	"	"	"	"	"	"	"

B.&O.R.R. ICC A-4  
W.M.Ry. ICC 8662

CFA—Central Freight Association.  
TL—Trunk Line Association.



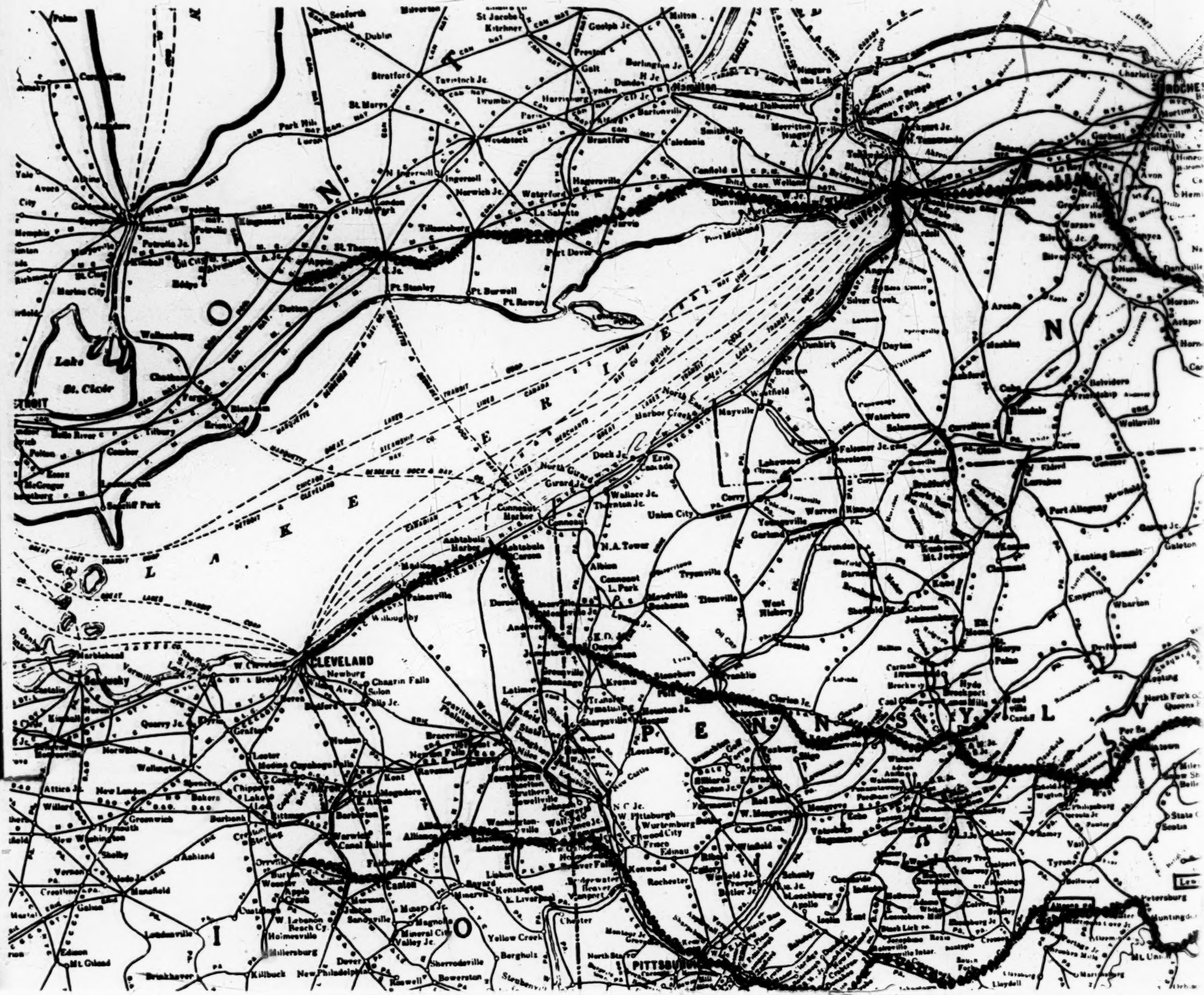




EXHIBIT No. \_\_\_\_\_  
 WITNESS \_\_\_\_\_  
 I.C.C. DOCKET No. 28647.  
 Page No. 3.

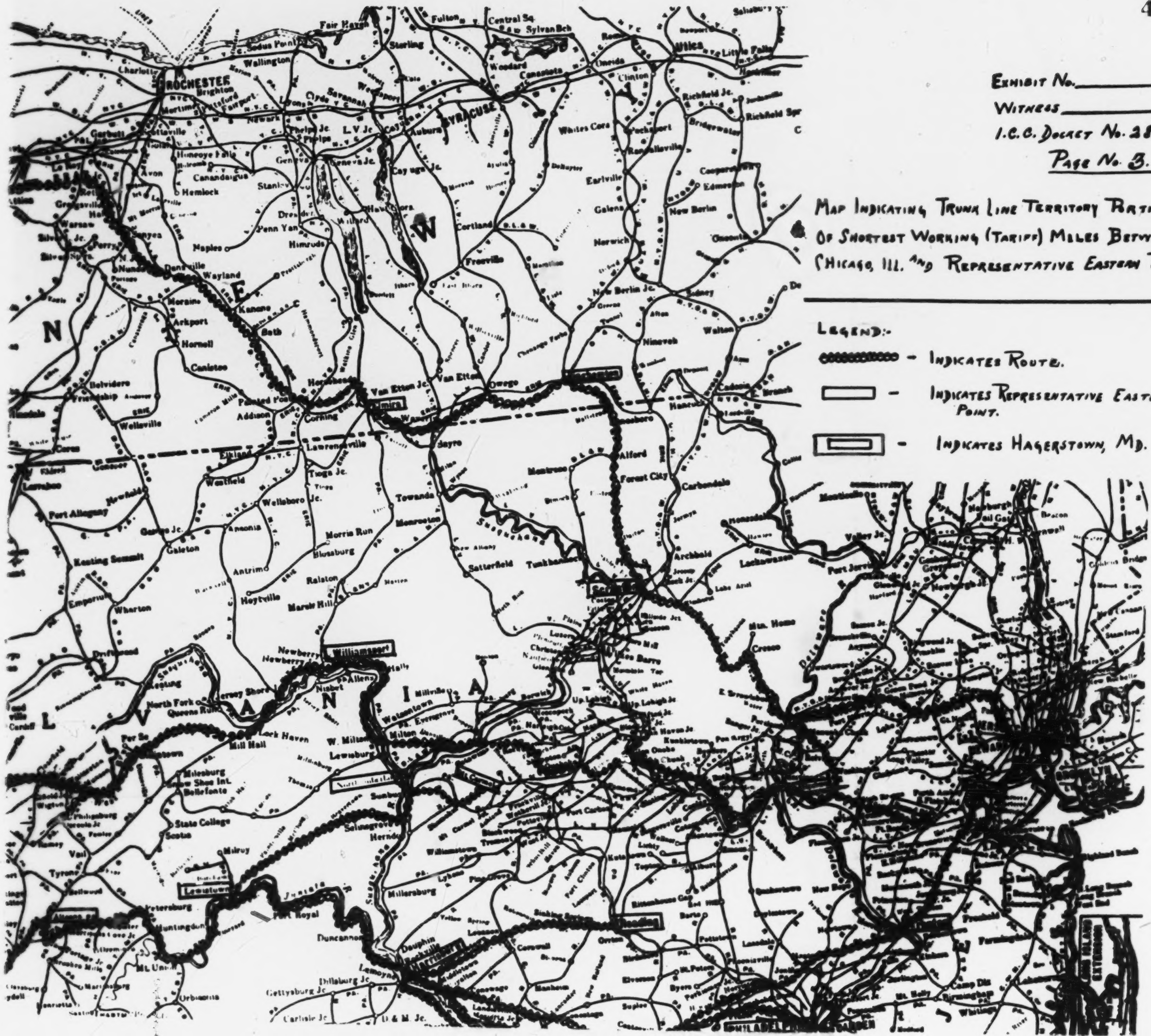
MAP INDICATING TRUNK LINE TERRITORY PORTION  
 OF SHORTEST WORKING (TARIFF) MILES BETWEEN  
 CHICAGO, ILL. AND REPRESENTATIVE EASTERN PORTS.

LEGEND:

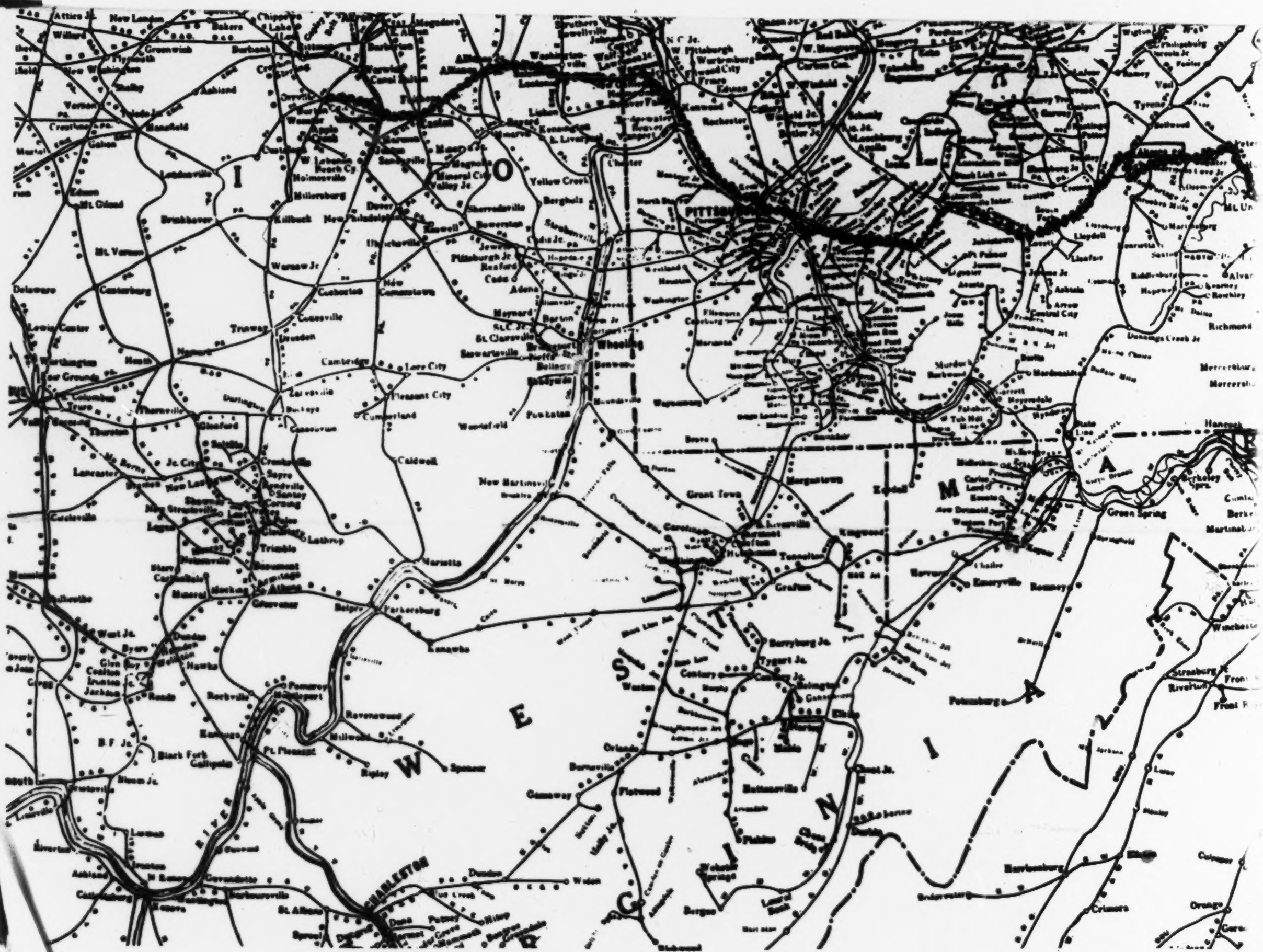
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□ - INDICATES REPRESENTATIVE EASTERN  
 POINT.

□ - INDICATES HAGERSTOWN, MD.











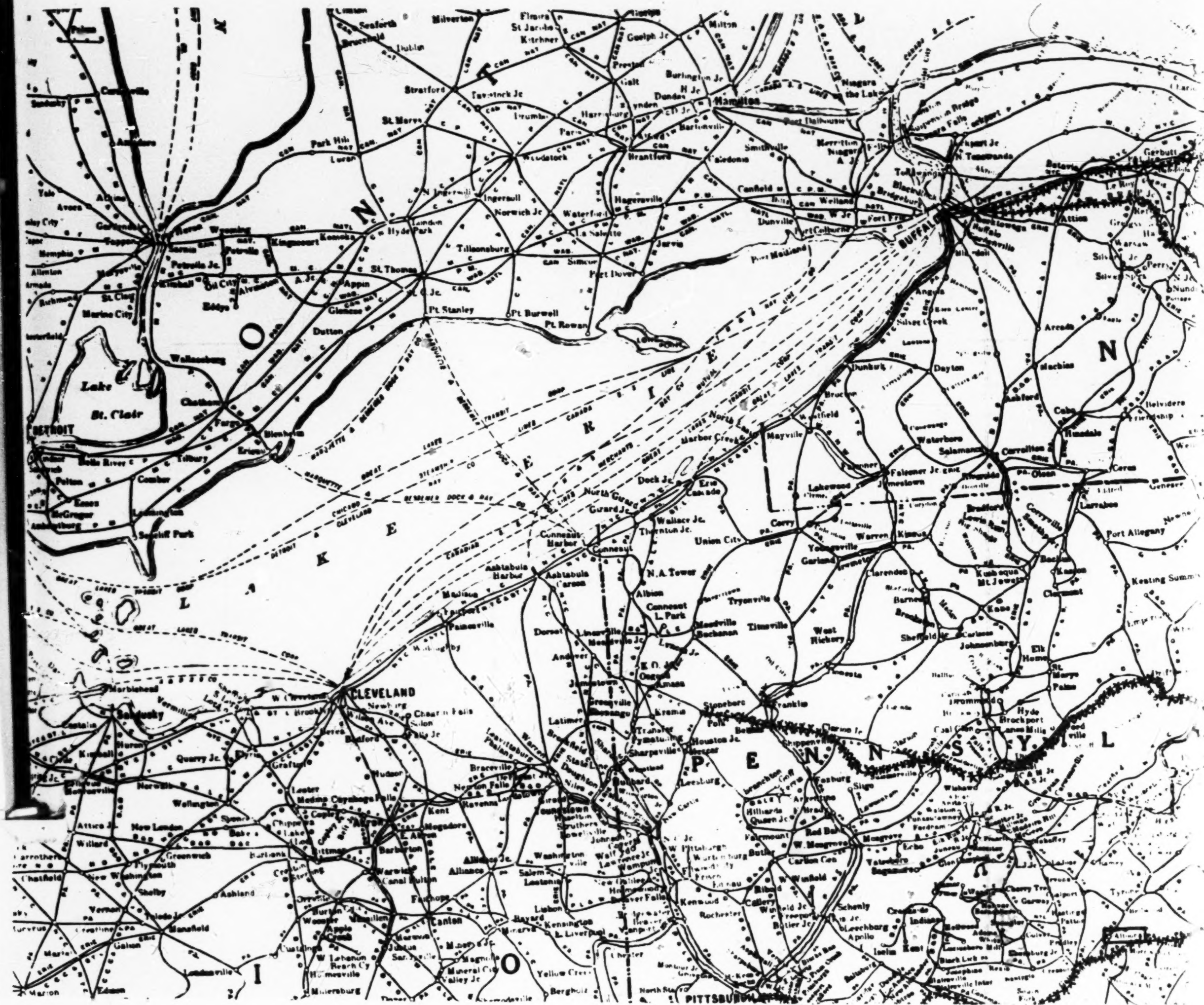




EXHIBIT No. \_\_\_\_\_

WITNESS \_\_\_\_\_

158 DOCKET No. 28647

PAGE No. 4

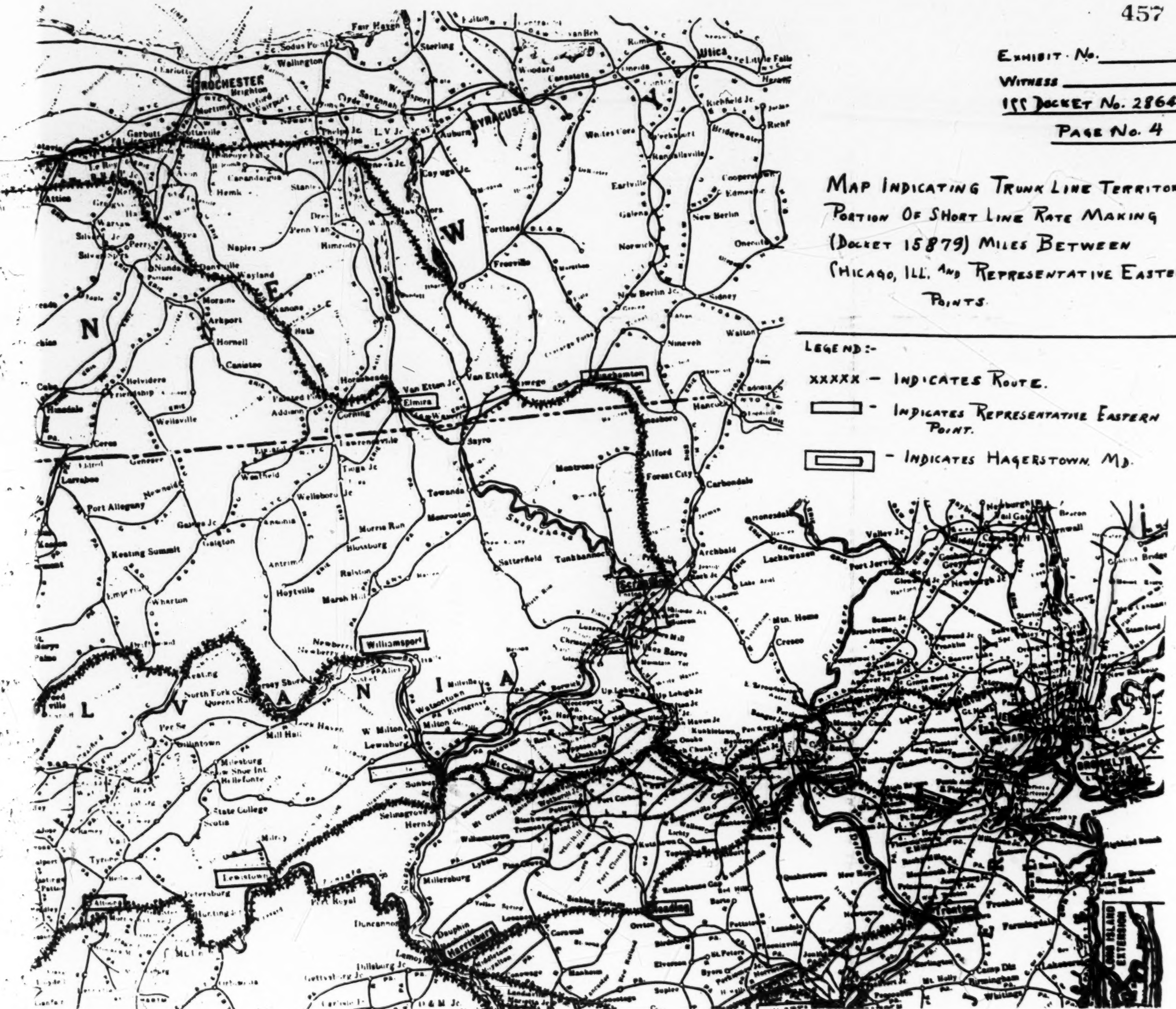
MAP INDICATING TRUNK LINE TERRITORY  
PORTION OF SHORT LINE RATE MAKING  
(DOCKET 15879) MILES BETWEEN  
CHICAGO, ILL. AND REPRESENTATIVE EASTERN  
POINTS.

## LEGEND:-

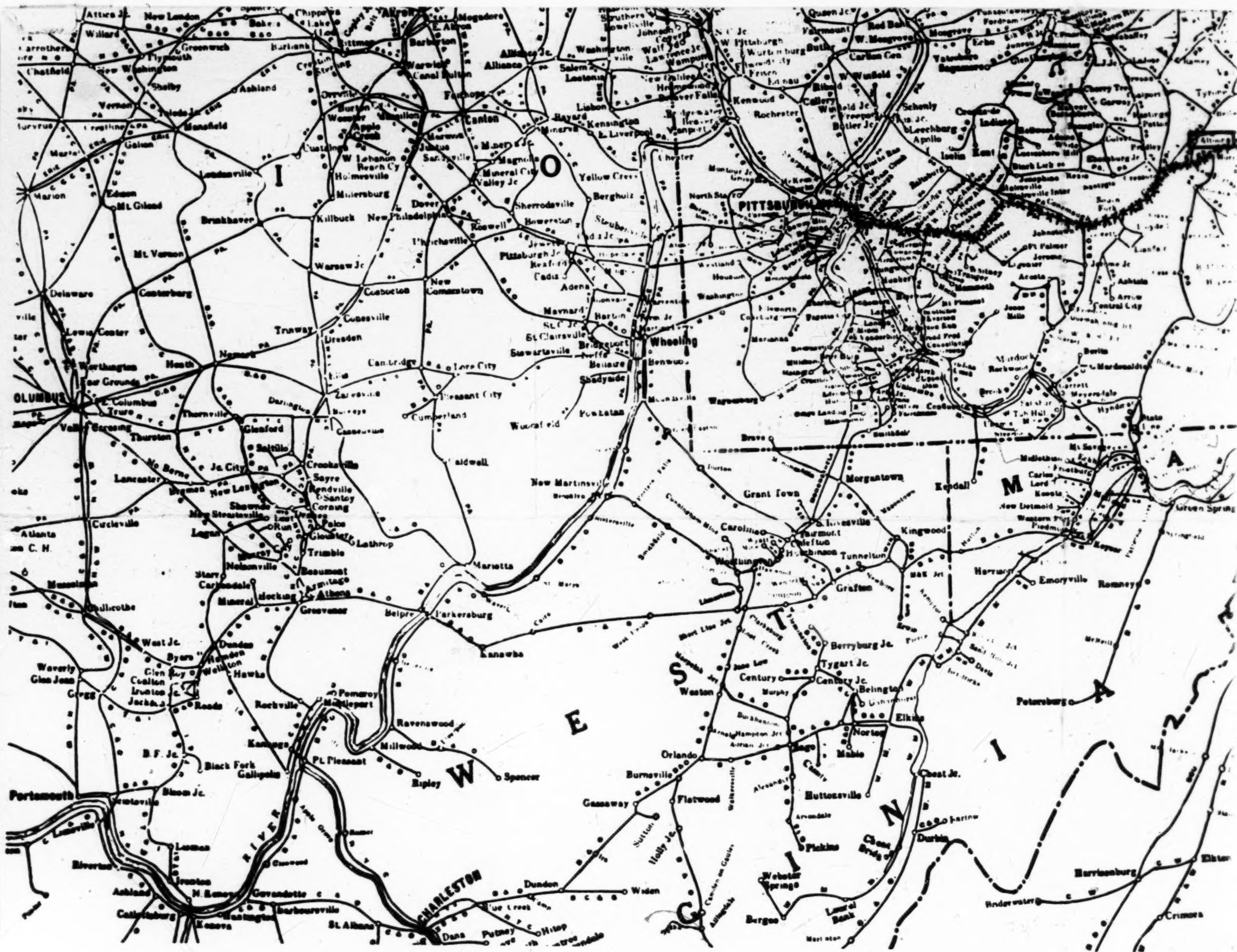
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[ ] - INDICATES REPRESENTATIVE EASTERN  
POINT.

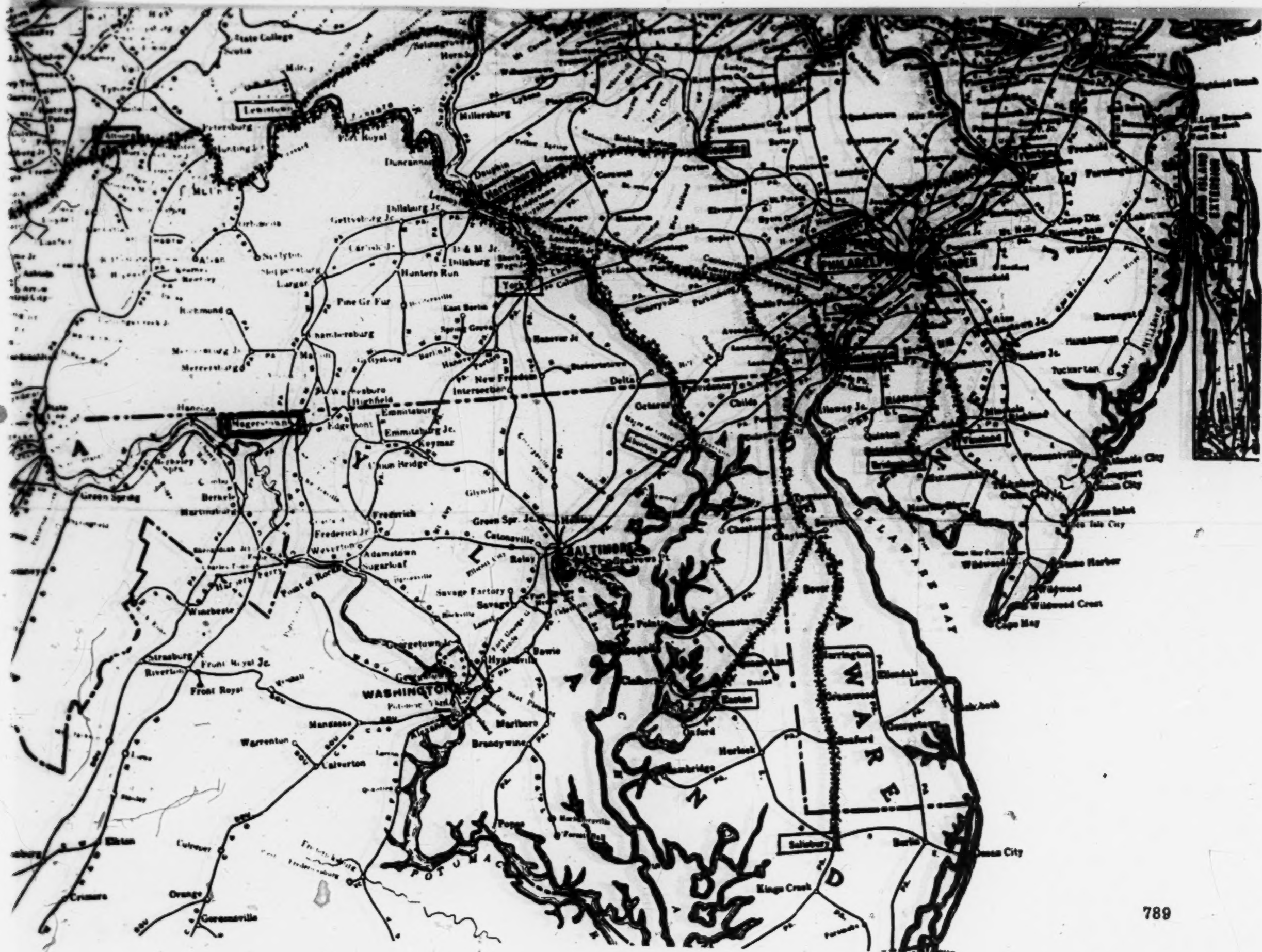
[ ] - INDICATES HAGERSTOWN, MD.











[fol. 790]

EXHIBIT No. 59

Statement Showing Shortest Working (Tariff) and I.C.C. Docket No. 15879 Short Line Rate Making Miles and Routes between East St. Louis and Peoria, Ill., on the One Hand and Aberdeen, Md., Wilmington, Del., and New York, Pa., on the Other

Between		Shortest Working (Tariff) Route		I.C.C. Docket No. 15879 Short Line Rate Making Miles and Routes	
EAST ST. LOUIS, ILL.		Miles	Route	Miles	CFA-TL Gateway Route to CFA-TL Gateway
And					
Aberdeen, Md.	924	B.&O.R.R. Direct		912	Parkersburg, W. Va. . . . . B.&O.R.R.-Bay View, Md.-P.R.R.-Fulton Cherry Run, W. Va.-B.&O.R.R.
Wilmington, Del.	967	P.R.R. Direct		948	Pittsburgh, Pa. . . . . B.&O.R.R.-Elsmere Jct., Del.-Rdg. Co.
York, Pa.	892	P.R.R. Direct		876	Pittsburgh, Pa. . . . . P.R.R. Direct.
Between					
PEORIA, ILL.					
And					
Aberdeen, Md.	912	B.&O.R.R.-Cincinnati, O.-C.C.C.&St.L.Ry.		873	Parkersburg, W. Va. . . . . B.&O.R.R.-Bay View, Md.-P.R.R.-Fulton Cherry Run, W. Va.-B.&O.R.R.
Wilmington, Del.	942	P.R.R.-Indianapolis, Ind.-C.C.C.&St.L.Ry.		899	Bessemer, Pa. . . . . B.&O.R.R.-Elsmere Jct., Del.-Rdg. Co.
York, Pa.	867	P.R.R.-Indianapolis, Ind.-C.C.C.&St.L.Ry.		827	Bessemer, Pa. . . . . P.R.R. Direct.

CFA—Central Freight Association.  
TL—Trunk Line Association.  
CD—856

EXHIBIT No. 59

Docket No. 15879 Short Line Rate Making Miles and Routes between East St. Louis and Peoria, Ill., on the One Hand and Aberdeen, Md., Wilmington, Del., and New York, Pa., on the Other

Route		I.C.C. Docket No. 15879 Short Line Rate Making Miles and Routes	
		Miles	CFA-TL Gateway Route to CFA-TL Gateway
		912	Parkersburg, W. Va. . . . . B.&O.R.R.-Bay View, Md.-P.R.R.-Fulton Jct., Md.-W.M.Ry.-Cherry Run, W. Va.-B.&O.R.R.
		948	Pittsburgh, Pa. . . . . B.&O.R.R.-Elsmere Jct., Del.-Rdg. Co.-Coatesville, Pa.-P.R.R.
		876	Pittsburgh, Pa. . . . . P.R.R. Direct.
Ry. . . . .		873	Parkersburg, W. Va. . . . . B.&O.R.R.-Bay View, Md.-P.R.R.-Fulton Jct., Md.-W.M. Ry. Cherry Run, W. Va.-B.&O.R.R.
Ry. . . . .		899	Bessemer, Pa. . . . . B.&O.R.R.-Elsmere Jct., Del.-Rdg. Co.-Coatesville, Pa.-P.R.R.
Ry. . . . .		827	Bessemer, Pa. . . . . P.R.R. Direct.

## EXHIBIT No. 60

[fol. 791]

Statement Showing Number of Carload Shipments Handled by Pennsylvania Railroad Company for Years 1938, 1939 and 1940 and First Seven Months of 1941 to and from Hagerstown, Md., for Account of D. A. Stickell & Sons, Inc.; Also Comparative Data.

## CARLOAD SHIPMENTS

	1941		1940		1939		1938	
	Inbound	Outbound	Inbound	Outbound	Inbound	Outbound	Inbound	Outbound
January.....	57	73	63	63	5	20	16	20
February.....	58	81	39	43	16	32	13	24
March.....	62	57	29	57	9	34	15	29
April.....	55	66	39	49	16	23	19	35
May.....	118	91	49	58	29	26	23	23
June.....	57	81	34	61	31	18	8	25
July.....	48	76	43	51	29	38	14	27
August.....			29	57	1	21	16	22
September.....			65	48	2	16	10	22
October.....			55	63	9	25	5	13
November.....			25	63	34	42	4	26
December.....			39	62	43	61	14	12
Total for First Six Months of Year (January to June, Both Inclusive).....	407	449	253	331	106	153	94	156
Total for Year.....	(1)455	(1)525	509	675	224	356	157	278

## COMPARATIVE DATA COVERING OUTBOUND CARLOAD SHIPMENTS

Total for First Six Months of 1941 (449 Cars) is 135.65% of Total for First Six Months of 1940 (331 Cars)  
 " " " " " " 1941 (449 " ) is 293.46% " " " " " " 1939 (153 " )  
 " " " " " " 1941 (449 " ) is 287.82% " " " " " " 1938 (156 " )  
 " " " " " " 1940 (331 " ) is 216.34% " " " " " " 1939 (153 " )  
 " " " " " " 1940 (331 " ) is 212.18% " " " " " " 1938 (156 " )  
 Total for Year 1940 (675 " ) is 189.61% " " Year 1939 (356 Cars)  
 " " " 1940 (675 " ) is 242.81% " " " 1938 (278 " )

(1)—Seven (7) Months.

CD-845





[fol. 792]

## EXHIBIT No. 61

## Statement

Showing Standard Out-of-Route or Back-Haul Charge Applying on Shipments of Lumber and Forest Products Carloads, Granted Transit Privileges at Points in C. F. A. Territory.

Miles		Rates in Cents per 100 Pounds
15 Miles and Under.....		2
30 " " Over 15 Miles.....		3
40 " " " 30 " .....		4½
55 " " " 40 " .....		5½
70 Miles and Over 55 Miles.....		6½
85 " " " 70 " .....		7½
100 " " " 85 " .....		8½
120 " " " 100 " .....		9½
140 " " " 120 " .....		10½
170 Miles and Over 140 Miles.....		11½
200 " " " 170 " .....		12½
220 " " " 200 " .....		13½
240 " " " 220 " .....		14½
250 " " " 240 " .....		15½

## Tariff Authority

P. R. R. Tariff 200-A I. C. C. 2500—Page 262.

[fol. 793]

## EXHIBIT No. 62

## Statement

Showing Standard Out-of-Route or Back-Haul Charge Applying on Shipments of Lumber and Forest Products, Carloads, Granted Transit Privileges at Points in Trunk Line Territory.

Miles		Rates in Cents per 100 Pounds
30 Miles and Under.....		2¾
60 Miles and Over 30 Miles.....		4½
100 Miles and Over 60 Miles.....		6
150 Miles and Over 100 Miles.....		7½
200 Miles and Over 150 Miles.....		9
250 Miles and Over 200 Miles.....		10
300 Miles and Over 250 Miles.....		11

## Tariff Authority

Rule 4, 2nd Revised Page 68, P. R. R. I. C. C. 2100

[fol. 794]

## EXHIBIT No. 63

## STATEMENT

Showing Transit Points in Central Freight Association Territory at Which Specific Back-Haul or Out of Route Movement Charge Applies on Shipments of Iron and Steel Articles (See Note) Carloads, and the Amount of Such Charge.

Transit Point	Origin Territory	Destination Territory	Back Haul or Out of Route Movement Charge	Tariff Authority
Ambridge, Pa. Economy, " Leetsdale, " Pittsburgh, " Beaver Falls, " Midland, " Morado, " Rochester, " Canonsburg, " Carnegie, " Glanford, " McKees Rocks, " Neville Island, " New Castle, " Sharon, " Sharpsville, "	Buffalo, N. Y. Lackawanna, N. Y.	PRR Stations, Hempfield To Torrance, Pa.  PRR Stations, Pack Saddle To Johnstown, Pa.  PRR Stations—Conemaugh To Cresson, Pa.  PRR Stations—Gallitzin To Altoona, Pa.  PRR Stations—Bellwood To Harrisburg, Pa.  Stations on Connecting Lines East of Wilkes-Barre	2¾ cents per 100 Pounds.  4½ cents per 100 Pounds.  6 cents per 100 Pounds.  7½ cents per 100 Pounds.  9 cents per 100 Pounds.  10 cents per 100 Pounds.	P. RR. I. C. C. 2500 Page 198 Page 202 Page 206 Page 210 Page 228 Page 236 Page 241
Leetsdale, Pa. Pittsburgh, Pa.	Johnstown, Pa.	P. RR. Stations and Connection Lines East of Johnstown, Pa.	3¼ cents per 100 Pounds.	P. R. R. I. C. C. 2500 Page 200
Beaver Falls, Pa. Midland, " Morado, " Rochester, "	Buffalo, N. Y. Lackawanna, N. Y.	Stations on P. RR. and Connections, Harrisburg, Pa. and East and South Thereof.	9 cents per 100 Pounds.	P. R. R. I. C. C. 2500 Page 201
Canonsburg, Pa.	Pittsburgh, Homestead, Bessemer, Munhall, Hays, Clairton, Pa.	Stations on P. R. R. and Connections, Pittsburgh, Pa. To Buffalo, N. Y.	3¼ cents per 100 Pounds.	P. R. R. I. C. C. 2500 Page 207
Canton, Ohio. Louisville, Ohio. Massillon, Ohio.	Weirton, W. Va.	Washington, D. C.	8½ cents per 100 Pounds.	P. R. R. I. C. C. 2500 Page 208
Carnegie, Pa. Glanford, "	Johnstown, Pa.	Stations on PRR and connections East of Johnstown, Pa.	3¼ cents per 100 Pounds.	P. R. R. I. C. C. 2500 Page 209

Transit Point	Origin Territory	Destination Territory	Back Haul or Out of Route Movement Charge	Tariff Authority
Greenville, Pa.	Pittsburgh, Pa. Munhall, " Hays, " Clairton, etc. "	Stations on the P. R. R. and Connections East of Johnstown, Pa.	3¼ cents per 100 Pounds.	P. R. R. I. C. C. 2500 Page 222.
Greenville, Pa.	Johnstown, Pa.	Stations on the P. R. R. and Connections East of Johnstown, Pa.	6½ cents per 100 Pounds.	P. R. R. I. C. C. 2500 Page 222.
McKees Rocks, Pa. Neville Island, " No. McKees Rocks, "	Buffalo, N. Y. Lackawanna, "	Stations on the P. R. R. and Connections, Harrisburg, Pa. and East and South thereof.	9 cents per 100 Pounds.	P. R. R. I. C. C. 2500, Page 227.
Muskegon, Mich.	Stations on PRR and Connections in CFA and Trunk Line Territories	Stations on P. R. R. Grand Rapids to Mackinaw City, Mich.	5 cents per 100 Pounds.	P. R. R. I. C. C. 2500, Page 230.
Mt. Vernon, Ohio.	Pittsburgh, Hays, Johnstown, Bessemer, Pa. etc., Weirton, W. Va.	Bedford, Ohio. Cleveland, Ohio.	2 cents per 100 Pounds.	P. R. R. I. C. C. 2500, Page 232.
New Castle, Pa. Sharon, " Sharpsville, "	Pittsburg, Hays, Munhall, Bessemer, Homestead, etc.	Stations on PRR and Connections East of Johnstown, Pa.	3¼ cents per 100 Pounds.	P. R. R. I. C. C. 2500, Pages 237-240.
New Castle, Pa. Sharon, " Sharpsville, " Youngstown, Ohio.	Johnstown, Pa.	Stations on PRR and Connections East of Johnstown, Pa.	6½ cents per 100 Pounds.	P. R. R. I. C. C. 2500, Page 237-240 Page 247
Point Pleasant, W. Va.	Pittsburgh, Pa. and District Buffalo, N. Y. Johnstown, Pa. Bethlehem, Pa.	East St. Louis, Ill. and Beyond	3¼ cents per 100 Pounds.	B&O RR I. C. C. 23324—Supp. No. 3
Point Pleasant, W. Va.	Girard, Ohio. Niles, " Youngstown, "	East St. Louis, Ill. and Beyond	7½ cents per 100 Pounds.	B&O RR I. C. C. 23324—Supp. No. 3
Point Pleasant, W. Va.	Warren, Ohio.	East St. Louis, Ill. and Beyond	9 cents per 100 Pounds.	B&O RR I. C. C. 23323—Sup. No. 3

NOTE—Transit privilege accorded on the Following Articles of Iron and Steel Carloads—

Angles  
Bars  
Beans  
Bolts  
Castings  
Channels  
Columns  
Ells  
Girders

Masts  
Nuts  
Plates  
Rivets  
Rods  
Tees  
Trusses  
Washers  
Zeas

[Vol. 796]

## EXHIBIT No. 64

Statement Showing Transit Points in Trunk Line Association Territory at which Specific Back-Haul or Out of Route Movement Charge Applies on Shipments of Iron and Steel Articles (See Note), Carloads, and the Amount of Such Charge.

Charge for Fabrication in Transit Service							
Transit Point	Origin Territory	Destination Territory	Out of Route Distance (P.R.R. I.C.C. 398) (Miles)	Published (Total) Charge	Published Total Charge Includes:		Tariff Reference
					Transit Charge (Cents per 100 Pounds)	Out of Route or Back Haul Charge	
Hagerstown, Md.	Coatesville, Pa. Claymont, Del. }	Pittsburgh, Pa.	149	12.0	3.25	8.75	P.R.R. I.C.C. 2140
		C.F.A. Territory					
		via Pittsburgh, Pa.	149				
		Northumberland, Pa.	150				
		Williamsport, Pa.	150				
		Elmira, N. Y.	150				
		Buffalo, N. Y.	150				
Rochester, N. Y.	150						
Sodus Point, N. Y.	150						
Berwick, Pa.	Pittsburgh, Pa. C.F.A. Territory via Pittsburgh, Pa. Harrisburg, Pa. }	Jersey City, N. J.	134	9.5	3.25	6.25	P.R.R. I.C.C. 2140
		Jersey City, N. J.	218	13.0	3.25	9.75	P.R.R. I.C.C. 2140
Chambersburg, Pa.	Pittsburgh, Pa. C.F.A. Territory via Pittsburgh, Pa. }	Jersey City, N. J.	119	12.0	3.25	8.75	P.R.R. I.C.C. 2140
		Philadelphia, Pa.	121	12.0	3.25	8.75	P.R.R. I.C.C. 2140
Lancaster, Pa.	Claymont, Del. Ivy Rock, Pa. Phoenixville, Pa.	Jersey City, N. J.	112	11.0	3.25	7.75	P.R.R. I.C.C. 2140
		Philadelphia, Pa.	112	11.0	3.25	7.75	P.R.R. I.C.C. 2140
		Jersey City, N. J.	103	11.0	3.25	7.75	P.R.R. I.C.C. 2140
Mechanicsburg, Pa.	Sparrows Point, Md.	Jersey City, N. J.	103	11.0	3.25	7.75	P.R.R. I.C.C. 2140
		Phoenixville, Pa.	84	9.5	3.25	6.25	P.R.R. I.C.C. 2140
Johnstown, Pa.	Coatesville, Pa. Harrisburg, Pa. Canton, O.	Altoona, Pa.	78	(1)	3.25	6.0	P.R.R. I.C.C. 2457
		Buffalo, N. Y.	153	(2)	3.25	9.0	P.R.R. I.C.C. 2457
		Indiana, Pa.	52	(3)	3.25	4.5	P.R.R. I.C.C. 2457
Coatesville, Pa.	Butler, Pa. Pittsburgh, Pa. Johnstown, Pa.	Baltimore, Md.	70	9.5	3.25	6.25	P.R.R. I.C.C. 2140
		Washington, D. C.	70	9.5	3.25	6.25	P.R.R. I.C.C. 2140
		Aberdeen, Md.	47	9.5	3.25	6.25	P.R.R. I.C.C. 2140

NOTE—Transit privilege accorded on the following articles of Iron and Steel, Carloads

Angles	Columns	Rivets
Bars	Ells	Rods
Beams	Girders	Tees
Bolts	Masts	Trusses
Castings	Nuts	Washers
Channels	Plates	Zees

(1)—Factors published separately—Total charge 9.25¢.

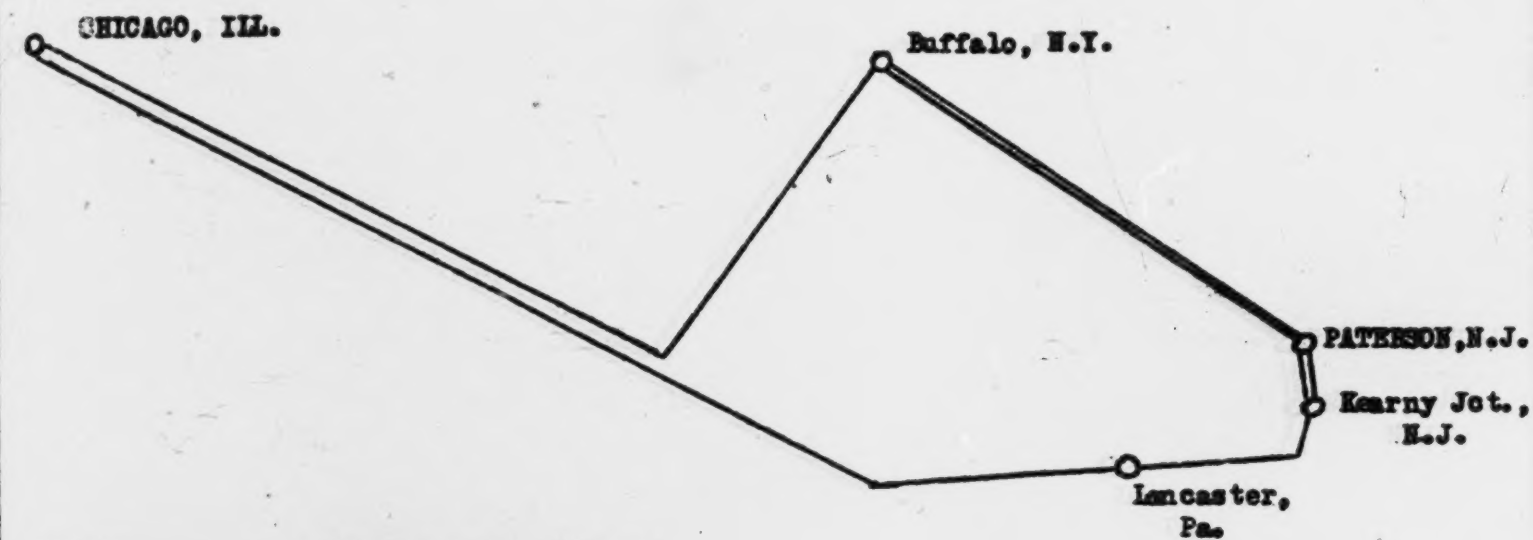
(2)—Factors published separately—Total charge 12.25¢.

(3)—Factors published separately—Total charge 7.75¢.



## EXHIBIT No. 65

DIAGRAMS ILLUSTRATING INSTANCES IN WHICH GRAIN TRANSIT OPERATORS ON P.R.R. WOULD SECURE ADDITIONAL CONNECTING LINE DESTINATION TERRITORY BY THE ESTABLISHMENT OF THEORETICAL ROUTES ESTABLISHING THE P.R.R. TRANSIT POINT ON THE DIRECT LINE; ALSO MILEAGES.



Origin - - - - - CHICAGO, ILL. (P.R.R.)  
 Destination - - - - - PATERSON, N.J. (D.L. & W.)  
 Transit Point - Lancaster, Pa. (P.R.R.)

## PRESENT ROUTE

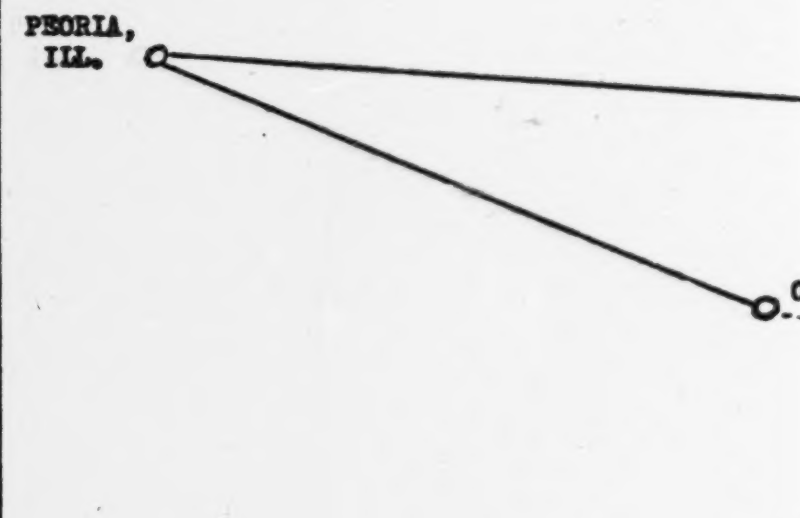
	Miles
( ) P.R.R. - Chicago, Ill., to Buffalo, N.Y. ....	728
( ) D.L. & W. - Buffalo, N.Y., to Paterson, N.J. ....	384
TOTAL .....	1112

## ROUTE TO ESTABLISH LANCASTER, PA. INTERMEDIATE

( ) P.R.R. - Chicago, Ill., to Kearny Jct., N.J. ....	895
( ) D.L. & W. - Kearny Jct., N.J., to Paterson, N.J. ....	15
TOTAL .....	910

## TARIFF REFERENCES FOR MILEAGES

P.R.R. I.C.C. 398  
 D.L. & W. I.C.C. 22030



Or  
 De  
 To

## PRESENT

( ) P.R.R. - Peoria, Ill., to Cincinnati, O. ....	384
( ) B. & O. - Cincinnati, O., to Georgetown, D.C. ....	538
TOTAL .....	922

## ROUTE TO ESTABLISH BEDFORD, PA. INTERMEDIATE

( ) P.R.R. - Peoria, Ill., to Hyndman, Pa. ....	810
( ) B. & O. - Hyndman, Pa., to Georgetown, D.C. ....	163
TOTAL .....	973

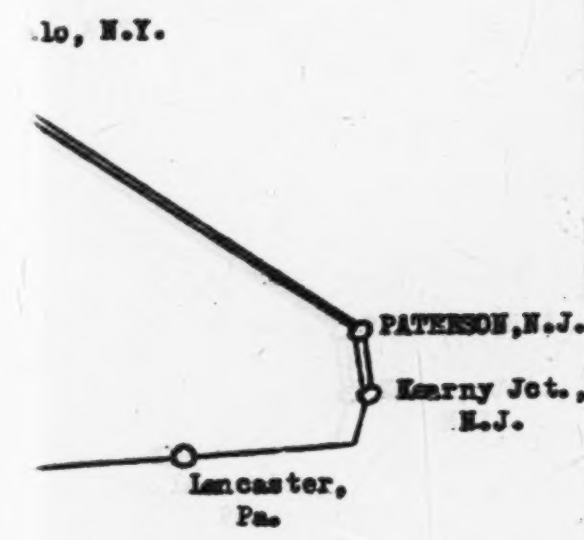
## TARIFF REFERENCES FOR MILEAGES

P.R.R. I.C.C. 398  
 D.L. & W. I.C.C. 22030

## EXHIBIT No. 65

DIAGRAMS ILLUSTRATING INSTANCES IN WHICH GRAIN TRANSIT OPERATORS ON P.R.R. WOULD SECURE ADDITIONAL CONNECTING LINE DESTINATION TERRITORY BY THE ESTABLISHMENT OF THEORETICAL ROUTES ESTABLISHING THE P.R.R. TRANSIT POINT ON THE DIRECT LINE; ALSO MILEAGES.

Exhibit No. 65  
 Witness \_\_\_\_\_  
 I.C.C. Docket No. 28647



Origin - - - - - PEORIA, ILL. (P.R.R.)  
 Destination - - - - - GEORGETOWN, D.C. (B. & O.)  
 Transit Point - Bedford, Pa. (P.R.R.)

## PRESENT ROUTE

	Miles
( ) P.R.R. - Peoria, Ill., to Cincinnati, O. ....	384
( ) B. & O. - Cincinnati, O., to Georgetown, D.C. ....	538
TOTAL .....	922

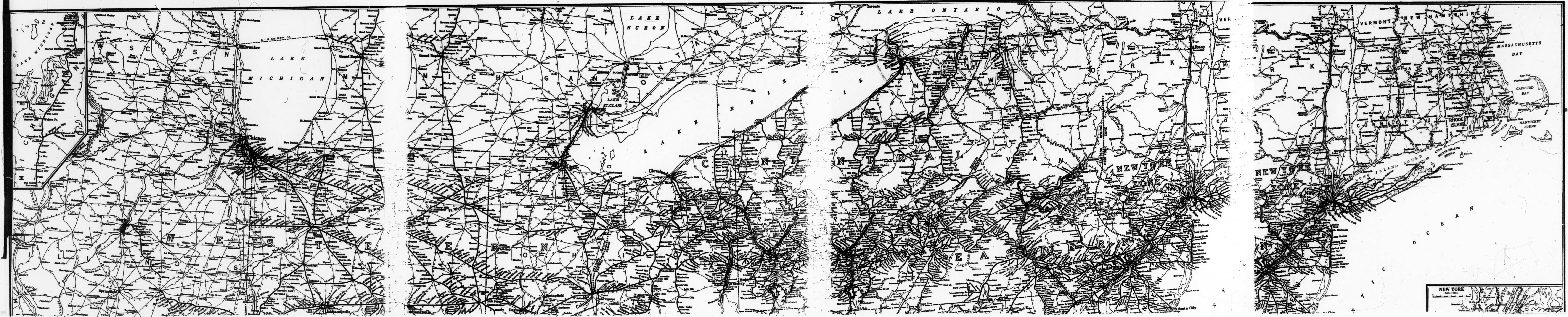
## ROUTE TO ESTABLISH BEDFORD, PA. INTERMEDIATE

( ) P.R.R. - Peoria, Ill., to Hyndman, Pa. ....	810
( ) B. & O. - Hyndman, Pa., to Georgetown, D.C. ....	163
TOTAL .....	973

## TARIFF REFERENCES FOR MILEAGES

P.R.R. I.C.C. 398  
 B. & O. I.C.C. 23392







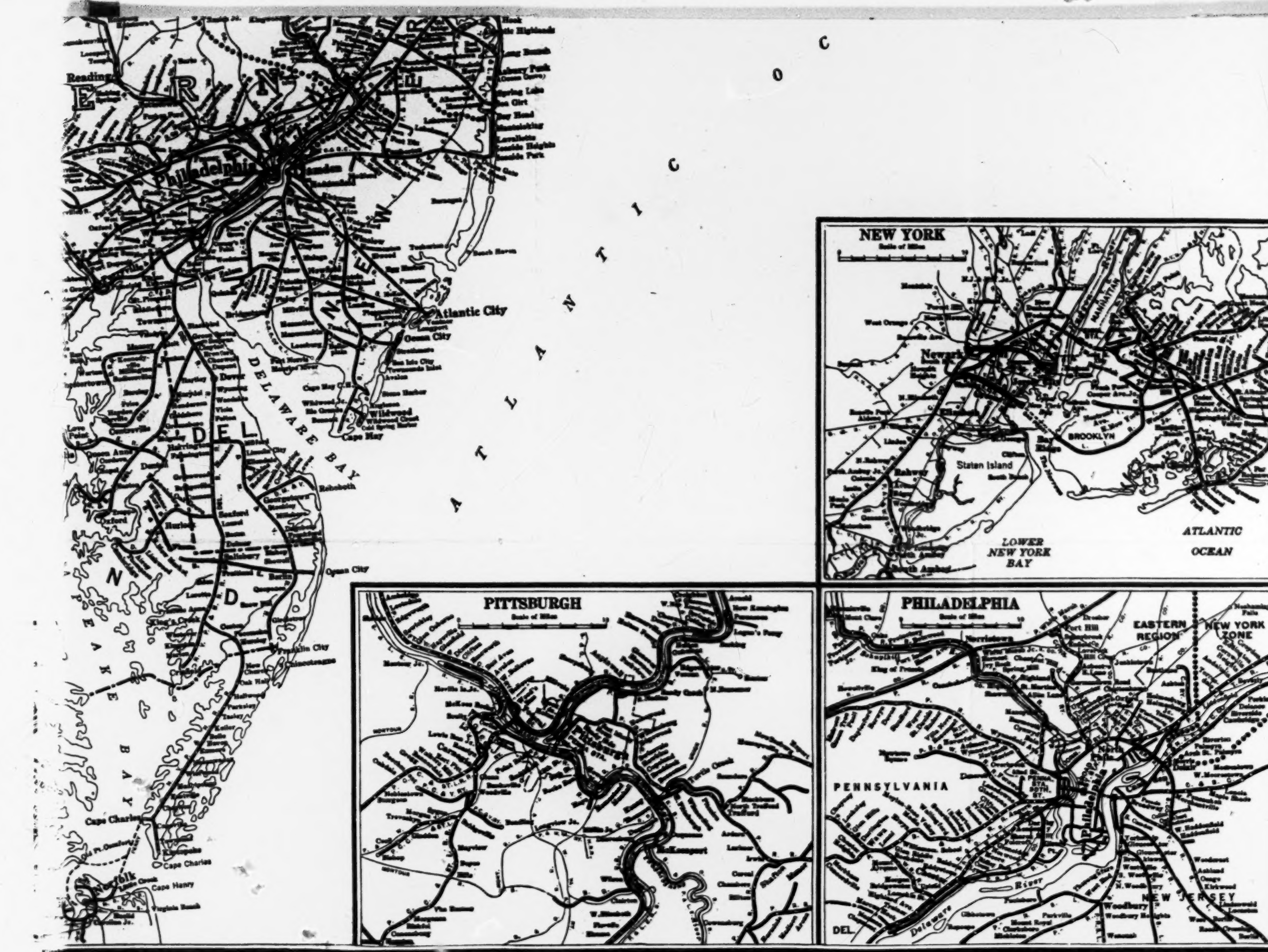
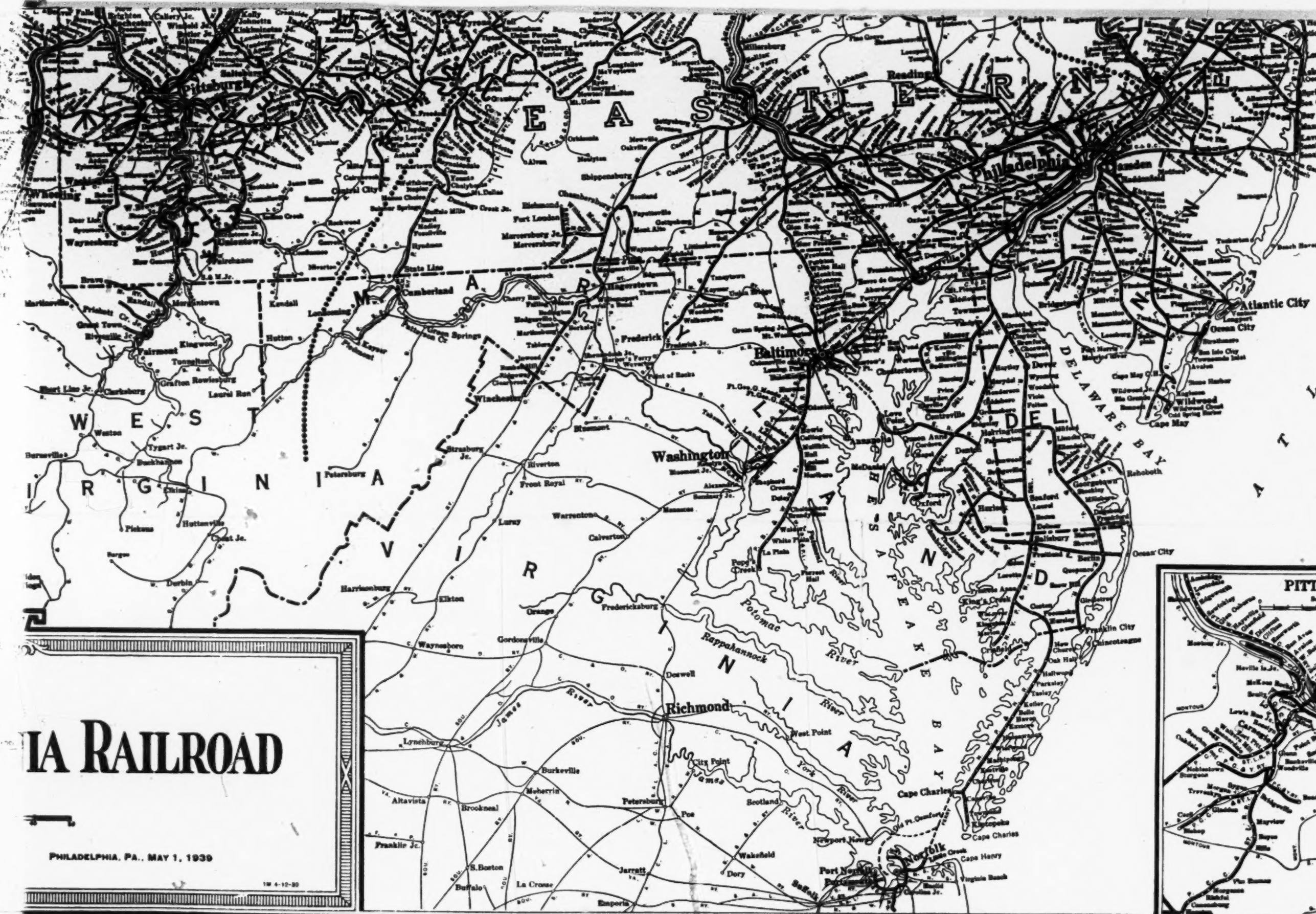
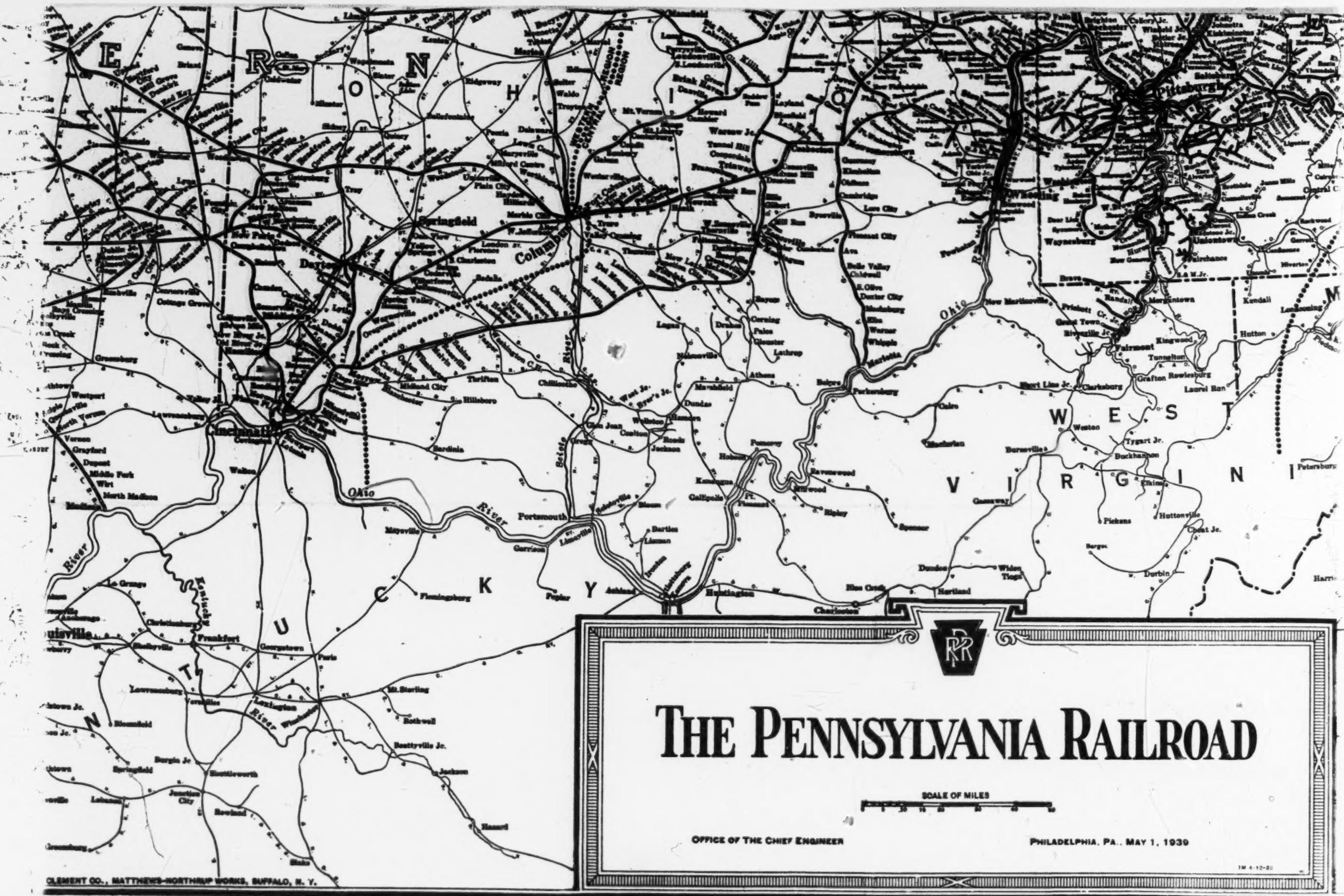
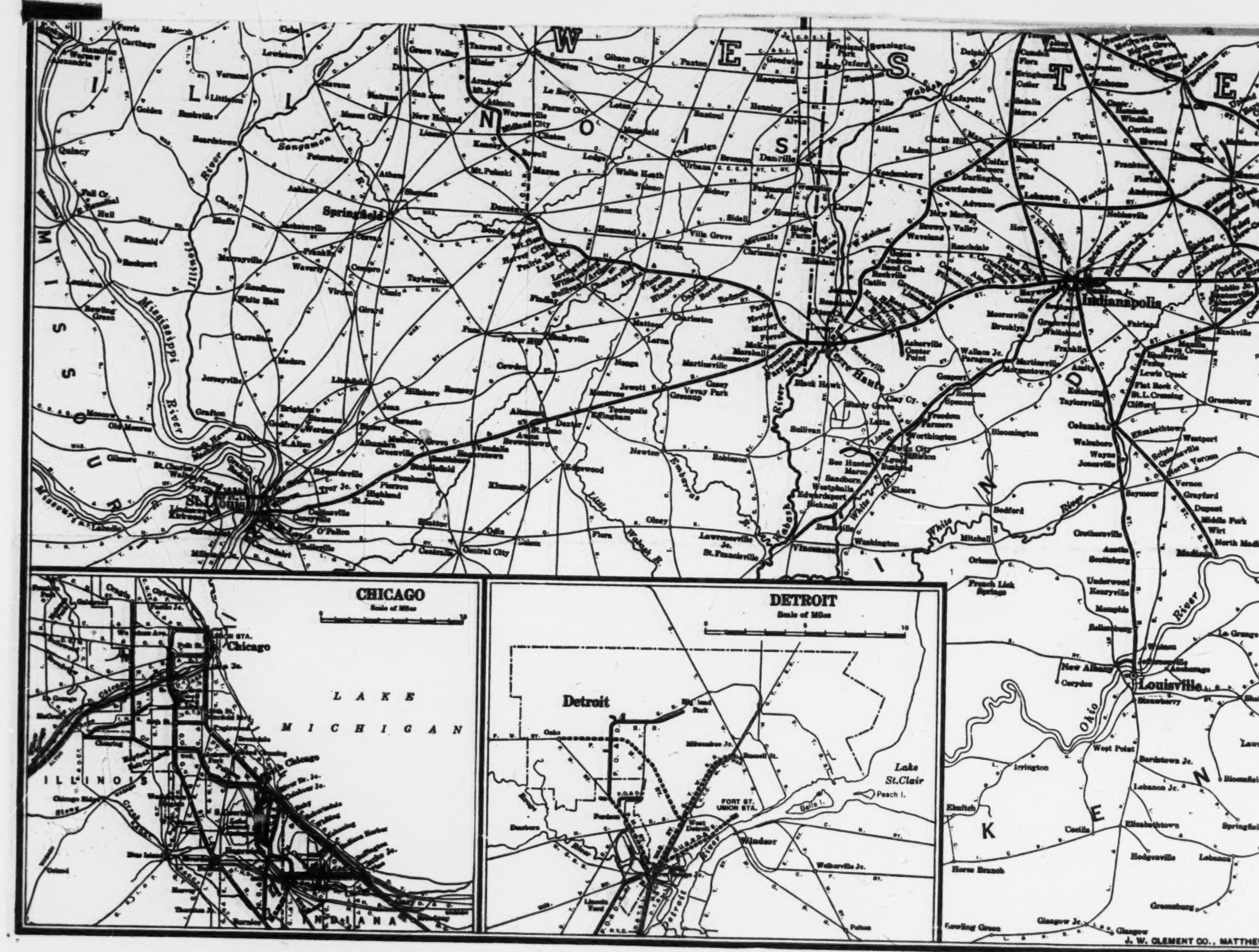




EXHIBIT No. 67  
 THE PENNSYLVANIA RAILROAD  
 DIAGRAM OF TRACKS  
 FULTON JCT. TO BACK RIVER  
 BALTIMORE, MD.

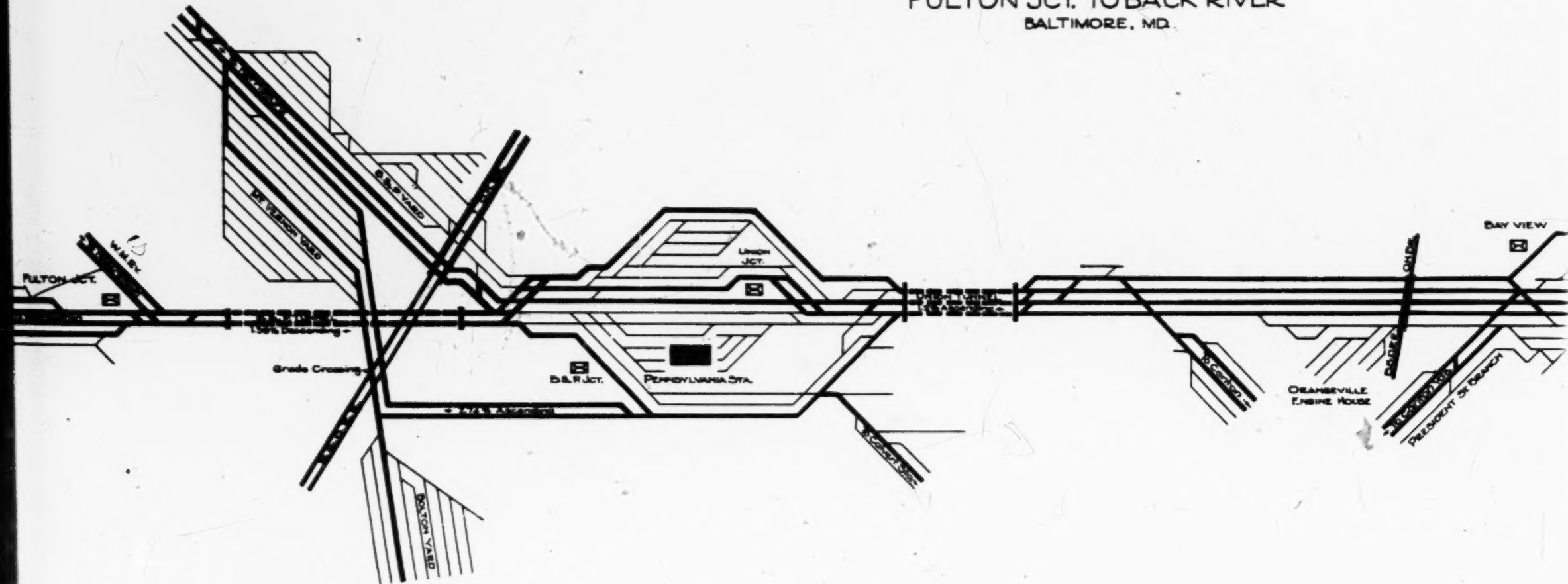
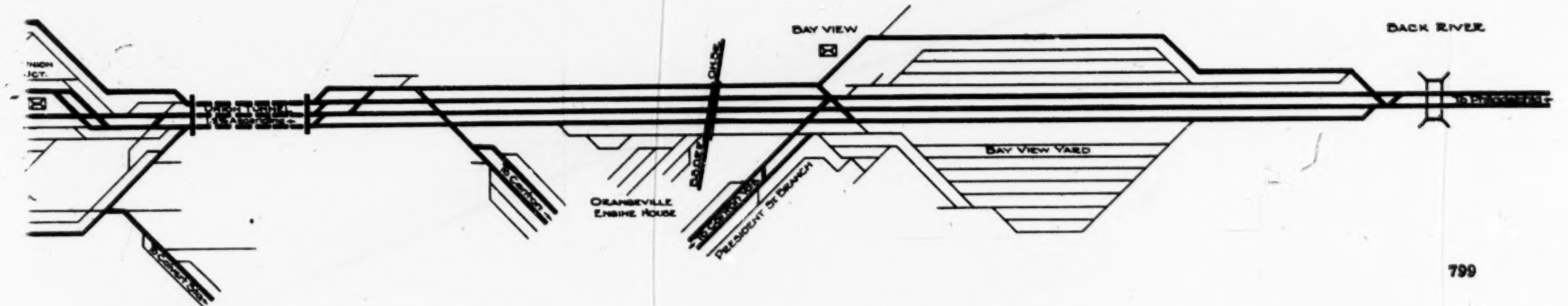


EXHIBIT No. 67  
 THE PENNSYLVANIA RAILROAD  
 DIAGRAM OF TRACKS  
 FULTON JCT. TO BACK RIVER  
 BALTIMORE, MD.



## EXHIBIT No. 68

Statement Showing for 33 Tons of Grain and Grain Products Moving from Western Origins to Eastern Destinations via Various Routes the Comparative Costs for Transportation Over the Specified Routes. Tare Weight of Car Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

	Route	Miles	Gross Ton Miles	Cost—Opr. Exps. Only					Cost—Opr. Exps., Rents, 5¾% Return :					
				Road	No.	Terminal Amount	No.	Interchange Amount	Total	Road	No.	Terminal Amount	No.	Interchange Amount
1. Chicago, Ill., to Salisbury, Md.	PRR	902	62,509	\$ 86.51	2	\$ 34.56	—	—	\$121.07	\$164.27	2	\$ 65.66	—	—
2. Chicago, Ill., to Salisbury, Md. (NYC to Youngstown, O., P&LE to Connellsville, Pa., WMd. to York, Pa.)	NYC	415	29,009	\$ 36.84	1	\$ 15.91	1	\$ 6.97	\$ 59.72	\$ 80.24	1	\$ 34.65	1	\$ 15.91
	P&LE	123	8,524	17.66			2	9.30	26.96	27.61			2	14.56
	WMd.	246	17,146	31.45			2	8.40	39.85	63.94			2	17.00
	PRR	174	12,058	16.69	1	17.28	1	5.31	39.28	31.69	1	32.83	1	10.00
	Total	958	66,668	\$102.64		\$ 33.19		\$ 29.98	\$165.81	\$203.48		\$ 67.48		\$ 56.80
3. Chicago, Ill., to Salisbury, Md. (Wab. to Toledo, O., W&LE to Pgh. Jct., O., P&WVa. to Connellsville, Pa., WMd. to Fulton Jct., Md.)	Wab.	234	15,748	\$ 18.82	1	\$ 11.83	1	\$ 8.75	\$ 39.40	\$ 35.43	1	\$ 22.30	1	\$ 16.69
	W&LE	184	12,475	46.74			2	10.22	56.96	45.78			2	16.69
	P&WVa.	112	7,750	25.47			2	6.20	31.67	54.48			2	13.91
	WMd.	253	17,634	32.34			2	8.40	40.74	65.76			2	17.00
	PRR	155	10,742	14.87	1	17.28	1	5.31	37.46	28.23	1	32.83	1	10.00
	Total	938	64,349	\$138.24		\$ 29.11		\$ 38.88	\$206.23	\$229.68		\$ 55.13		\$ 73.20
4. Chicago, Ill., to Salisbury, Md. (C&O to Durbin, W. Va., WMd. to Hagerstown, Md.)	C&O	726	52,345	\$ 52.29	1	\$ 10.97	1	\$ 3.82	\$ 67.08	\$102.91	1	\$ 21.18	1	\$ 16.69
	WMd.	236	16,449	30.17			2	8.40	38.57	61.34			2	17.00
	PRR	260	18,018	24.94	1	17.28	1	5.31	47.53	47.35	1	32.83	1	10.00
	Total	1222	86,812	\$107.40		\$ 28.25		\$ 17.53	\$153.18	\$211.60		\$ 54.01		\$ 33.69
5. Chicago, Ill., to Salisbury, Md. (Mich. Cent. to Toledo, O., C&O to Charlestown, W. Va., B&O to Norton, W. Va., WMd. to Fulton Jct., Md.)	M.Cent.	334	23,347	\$ 29.65	1	\$ 15.91	1	\$ 6.97	\$ 52.53	\$ 64.58	1	\$ 34.65	1	\$ 16.69
	C&O	319	23,000	23.41			2	7.63	31.04	45.22			2	16.69
	B&O	181	12,435	19.95			2	9.56	29.51	33.82			2	10.00
	WMd.	280	19,516	35.79			2	8.40	44.19	72.78			2	17.00
	PRR	155	10,742	14.87	1	17.28	1	5.31	37.46	28.23	1	32.83	1	10.00
	Total	1269	89,040	\$123.67	1	\$ 33.19		\$ 37.87	\$194.73	\$244.63		\$ 67.48		\$ 73.20
<hr/>														
6. Peoria, Ill., to Dagsboro, Del.	PRR	1057	73,250	\$101.37	2	\$ 34.56	—	—	\$135.93	\$192.50	2	\$ 65.66	—	—
7. Peoria, Ill., to Dagsboro, Del. (NYC to Youngstown, O., via Cleveland P&LE to Connellsville, Pa., WMd. to Fulton Jct., Md.)	NYC	588	41,101	\$ 52.20	1	\$ 15.91	1	\$ 6.97	\$ 75.08	\$113.69	1	\$ 34.65	1	\$ 16.69
	P&LE	123	9,524	17.66			2	9.30	26.96	27.61			2	14.56
	WMd.	253	17,634	32.34			2	9.40	40.74	65.76			2	17.00
	PRR	156	10,811	14.96	1	17.28	1	5.31	37.55	28.41	1	32.83	1	10.00
	Total	1120	78,070	\$117.16		\$ 33.19		\$ 29.98	\$180.33	\$235.47		\$ 67.48		\$ 56.80
8. Peoria, Ill., to Dagsboro, Del. (PRR to Indianapolis, Ind., NYC to Cincinnati, O., C&O to Durbin, W. Va., WMd. to York, Pa.)	PRR	246	17,048	\$ 23.59	1	\$ 17.28		\$ 5.31	\$ 46.18	\$ 44.80	1	\$ 32.83	1	\$ 10.00
	NYC	110	7,689	9.77			2	13.94	23.71	21.27			2	30.30
	C&O	440	31,724	32.30			2	7.63	39.93	62.37			2	14.70
	WMd.	313	21,816	40.01			2	8.40	48.41	81.35			2	17.00
	PRR	172	11,920	16.50	1	17.28	1	5.31	39.09	31.33	1	32.83	1	10.00
	Total	1281	90,197	\$122.17		\$ 34.56		\$ 40.59	\$197.32	\$241.12		\$ 65.66		\$ 82.30
9. Peoria, Ill., to Dagsboro, Del. (PRR to Indianapolis, Ind., NYC to Columbus, O., B&O to Cherry Run, W. Va., WMd. to Hagerstown, Md.)	PRR	246	17,048	\$ 23.59	1	\$ 17.28	1	\$ 5.31	\$ 46.18	\$ 44.80	1	\$ 32.83	1	\$ 10.00
	NYC	185	12,932	16.42			2	13.94	30.36	35.77			2	30.30
	B&O	383	26,312	42.20			2	9.56	51.76	71.57			2	16.20
	WMd.	19	1,324	2.43			2	8.40	10.83	4.94			2	17.00
	PRR	258	17,879	26.01	1	17.28	1	5.31	48.60	46.99	1	32.83	1	10.00
	Total	1091	75,495	\$110.65		\$ 34.56		\$ 42.52	\$187.73	\$204.07		\$ 65.66		\$ 83.80



## EXHIBIT No. 68

Statement Showing for 33 Tons of Grain and Grain Products Moving from Western Origins to Eastern Destinations via Various Routes the Comparative Costs for Transportation Over the Specified Routes. Tare Weight of Car Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

	Route	Miles	Gross Ton Miles	Cost—Opr. Exps. Only					Cost—Opr. Exps., Rents, 5¼% Return and Pass. Defcy.						
				Road	No.	Terminal Amount	No.	Interchange Amount	Total	Road	No.	Terminal Amount	No.	Interchange Amount	Total
o Salisbury, Md.	PRR	902	62,509	\$ 86.51	2	\$ 34.56	—	—	\$121.07	\$164.27	2	\$ 65.66	—	—	\$292.93
o Salisbury, Md.	NYC	415	29,009	\$ 36.84	1	\$ 15.91	1	\$ 6.97	\$ 59.72	\$ 80.24	1	\$ 34.65	1	\$ 15.18	\$130.07
ungstown, O.,	P&LE	123	8,524	17.66			2	9.30	26.96	27.61			2	14.54	42.15
onnellsville, Pa.,	WMd.	246	17,446	31.45			2	8.40	39.85	63.94			2	17.08	81.02
ork, Pa.)	PRR	174	12,058	16.69	1	17.28	1	5.31	39.28	31.69	1	32.83	1	10.09	74.61
	Total	958	66,668	\$102.64		\$ 33.19		\$ 29.98	\$165.81	\$203.48		\$ 67.48		\$ 56.89	\$327.85
o Salisbury, Md.	Wab.	234	15,748	\$ 18.82	1	\$ 11.83	1	\$ 8.75	\$ 39.40	\$ 35.43	1	\$ 22.30	1	\$ 16.49	\$ 74.22
ledo, O.,	W&LE	184	12,475	46.74			2	10.22	56.96	45.78			2	16.76	62.54
gh. Jct., O.,	P&WVa.	112	7,750	25.47			2	6.20	31.67	54.48			2	13.26	67.74
Connellsville, Pa.,	WMd.	253	17,634	32.34			2	8.40	40.74	65.76			2	17.08	82.84
ulton Jct., Md.)	PRR	155	10,742	14.87	1	17.28	1	5.31	37.46	28.23	1	32.83	1	10.09	71.15
	Total	938	64,349	\$138.24		\$ 29.11		\$ 38.88	\$206.23	\$229.68		\$ 55.13		\$ 73.68	\$358.49
o Salisbury, Md.	C&O	726	52,345	\$ 52.29	1	\$ 10.97	1	\$ 3.82	\$ 67.08	\$102.91	1	\$ 21.18	1	\$ 7.37	\$131.46
rb. W. Va.,	WMd.	236	16,449	30.17			2	8.40	38.57	61.34			2	17.08	78.42
agerstown, Md.)	PRR	260	18,018	24.94	1	17.28	1	5.31	47.53	47.35	1	32.83	1	10.09	90.27
	Total	1222	86,812	\$107.40		\$ 28.25		\$ 17.53	\$153.18	\$211.60		\$ 54.01		\$ 34.54	\$300.15
o Salisbury, Md.	M.Cent.	334	23,347	\$ 29.65	1	\$ 15.91	1	\$ 6.97	\$ 52.53	\$ 64.58	1	\$ 34.65	1	\$ 15.18	\$114.41
to Toledo, O.,	C&O	319	23,000	23.41			2	7.63	31.04	45.22			2	14.73	59.95
arlestown, W. Va.,	B&O	181	12,435	19.95			2	9.56	29.51	33.82			2	16.22	50.04
rton, W. Va.,	WMd.	280	19,516	35.79			2	8.40	44.19	72.78			2	17.08	89.86
ulton Jct., Md.)	PRR	155	10,742	14.87	1	17.28	1	5.31	37.46	28.23	1	32.83	1	10.09	71.15
	Total	1269	89,040	\$123.67	1	\$ 33.19		\$ 37.87	\$194.73	\$244.63		\$ 67.48		\$ 73.30	\$385.41
-----															
Dagsboro, Del.	PRR	1057	73,250	\$101.37	2	\$ 34.56	—	—	\$135.93	\$192.50	2	\$ 65.66	—	—	\$258.16
Dagsboro, Del.	NYC	588	41,101	\$ 52.20	1	\$ 15.91	1	\$ 6.97	\$ 75.08	\$113.69	1	\$ 34.65	1	\$ 15.18	\$163.52
ungstown, O., via Cleveland	P&LE	123	9,524	17.66			2	9.30	26.96	27.61			2	14.54	42.15
nnellsville, Pa.,	WMd.	253	17,634	32.34			2	9.40	40.74	65.76			2	17.08	82.84
ulton Jct., Md.)	PRR	156	10,811	14.96	1	17.28	1	5.31	37.55	28.41	1	32.83	1	10.09	71.33
	Total	1120	78,070	\$117.16		\$ 33.19		\$ 29.98	\$180.33	\$235.47		\$ 67.48		\$ 56.89	\$359.84
Dagsboro, Del.	PRR	246	17,048	\$ 23.59	1	\$ 17.28	\$	\$ 5.31	\$ 46.18	\$ 44.80	1	\$ 32.83	1	\$ 10.09	\$ 87.72
ianapolis, Ind.,	NYC	110	7,689	9.77			2	13.94	23.71	21.27			2	30.36	51.63
incinnati, O.,	C&O	440	31,724	32.30			2	7.63	39.93	62.37			2	14.73	77.10
rb. W. Va.,	WMd.	313	21,816	40.01			2	8.40	48.41	81.35			2	17.08	98.43
rk, Pa.)	PRR	172	11,920	16.50	1	17.28	1	5.31	39.09	31.33	1	32.83	1	10.09	74.25
	Total	1281	90,197	\$122.17		\$ 34.56		\$ 40.59	\$197.32	\$241.12		\$ 65.66		\$ 82.35	\$389.13
Dagsboro, Del.	PRR	246	17,048	\$ 23.59	1	\$ 17.28	1	\$ 5.31	\$ 46.18	\$ 44.80	1	\$ 32.83	1	\$ 10.09	\$ 87.72
ianapolis, Ind.,	NYC	185	12,932	16.42			2	13.94	30.36	35.77			2	30.36	66.13
umbus, O.,	B&O	383	26,312	42.20			2	9.56	51.76	71.57			2	16.22	87.79
erry Run, W. Va.	WMd.	19	1,324	2.43			2	8.40	10.83	4.94			2	17.08	22.02
agerstown, Md.)	PRR	258	17,879	26.01	1	17.28	1	5.31	48.60	46.99	1	32.83	1	10.09	89.91
	Total	1091	75,495	\$110.65		\$ 34.56		\$ 42.52	\$187.73	\$204.07		\$ 65.66		\$ 83.84	\$353.57



## EXHIBIT No. 68

Statement Showing for 33 Tons of Grain and Grain Products Moving from Western Origins to Eastern Destinations via Various Routes the Comparative Costs for Transportation Over the Specified Routes. Tare Weight of Car Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

	Route	Miles	Gross Ton Miles	Cost—Opr. Exps. Only				Cost—Opr. Exps., Rents, 5¼% R			
				Road	Terminal		Interchange	Road	Terminal		In
					No.	Amount			No.	Amount	
10. E. St. Louis, Ill., to Milford, N. J.	PRR	1027	71,171	\$ 98.50	2	\$ 34.56	-	\$187.04	2	\$ 65.66	-
11. E. St. Louis, Ill., to Milford, N. J. (NYC to Youngstown, O., via Cleveland, P&LE to Connellsville, Pa., WMd. to Fulton Jet., Md.)	NYC	628	43,897	\$ 55.75	1	\$ 15.91	1	\$ 6.97	1	\$ 34.65	1
	P&LE	123	8,524	17.66			2	9.30	2		2
	WMd.	253	17,634	32.34			2	8.40	2		2
	PRR	167	11,573	16.02	1	17.28	1	5.31	1	32.83	1
Total		1171	81,628	\$121.77		\$ 33.19		\$245.20		\$ 67.48	
12. E. St. Louis, Ill., to Milford, N. J. (Wab. to Toledo, O. W&LE to Pgh. Jet., O. P&WVa. to Connellsville, Pa. WMd. to York, Pa.)	Wab.	437	29,410	\$ 35.14	1	\$ 11.83	1	\$ 8.75	1	\$ 22.30	1
	W&LE	184	12,475	27.92			2	10.22	2		2
	P&WVa.	112	7,750	25.47			2	6.20	2		2
	WMd.	246	17,146	31.45			2	8.40	2		2
	PRR	153	10,603	14.67	1	17.28	1	5.31	1	32.83	1
Total		1132	77,384	\$134.65		\$ 29.11		\$258.23		\$ 55.13	
13. E. St. Louis, Ill., to Milford, N. J. (B&O to Cincinnati, O., C&O to Durbin, W. Va., WMd. to Hagerstown, Md.)	B&O	335	23,015	\$ 36.92	1	\$ 13.13	1	\$ 4.78	1	\$ 22.27	1
	C&O	441	31,796	32.37			2	7.63	2		2
	WMd.	236	16,449	30.17			2	8.40	2		2
	PRR	237	16,424	22.73	1	17.28	1	5.31	1	32.83	1
Total		1249	87,684	\$122.19		\$ 30.41		\$229.61		\$ 55.10	
14. Decatur, Ill., to Chatham, Pa.	PRR	869	60,222	\$ 83.35	2	\$ 34.56	-	\$158.26	2	\$ 65.66	-
15. Decatur, Ill., to Chatham, Pa. (Wab. to Toledo, O., W&LE to Pgh. Jet., O., P&WVa. to Connellsville, Pa., WMd. to York, Pa.)	Wab.	324	21,805	\$ 26.06	1	\$ 11.83	1	\$ 8.75	1	\$ 22.30	1
	W&LE	184	12,475	27.92			2	10.22	2		2
	P&WVa.	112	7,750	25.47			2	6.20	2		2
	WMd.	246	17,146	31.45			2	8.40	2		2
	PRR	66	4,574	6.33	1	17.28	1	5.31	1	32.83	1
Total		932	63,750	\$117.23		\$ 29.11		\$185.22		\$ 55.13	
16. Decatur, Ill., to Chatham, Pa. (B&O to Cherry Run, W. Va., WMd. to Hagerstown, Md.)	B&O	712	48,914	\$ 78.46	1	\$ 13.13	1	\$ 4.78	1	\$ 22.27	1
	WMd.	19	1,324	2.43			2	8.40	2		2
	PRR	150	10,395	14.39	1	17.28	1	5.31	1	32.83	1
Total		881	60,633	\$ 95.28		\$ 30.41		\$165.31		\$ 55.10	
17. Decatur, Ill., to Chatham, Pa. (PRR to Indianapolis, Ind., NYC to Columbus, O., B&O to Cherry Run, W. Va., WMd. to Fulton Jet., Md.)	PRR	167	11,573	\$ 16.02	1	\$ 17.28	1	\$ 5.31	1	\$ 32.83	1
	NYC	185	12,932	16.42			2	13.94	2		2
	B&O	383	26,312	42.20			2	9.56	2		2
	WMd.	103	7,179	13.17			2	8.40	2		2
	PRR	75	5,198	7.19	1	17.28	1	5.31	1	32.83	1
Total		913	63,194	\$ 95.00		\$ 34.56		\$172.08		\$ 65.66	

## EXHIBIT No. 68

Statement Showing for 33 Tons of Grain and Grain Products Moving from Western Origins to Eastern Destinations via Various Routes the Comparative Costs for Transportation Over the Specified Routes. Tare Weight of Car Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

	Route	Miles	Gross Ton Miles	Cost—Opr. Exps. Only				Cost—Opr. Exps., Rents, 5¼% Return and Pass. Defey.			
				Road	Terminal		Interchange	Road	Terminal		Total
					No.	Amount			No.	Amount	
Ill., to Milford, N. J.	PRR	1027	71,171	\$ 98.50	2	\$ 34.56	-	\$187.04	2	\$ 65.66	\$252.70
Ill., to Milford, N. J. (Youngstown, O., via Cleveland, Connellsville, Pa., Fulton Jet., Md.)	NYC	628	43,897	\$ 55.75	1	\$ 15.91	1	\$ 6.97	1	\$ 34.65	\$171.25
	P&LE	123	8,524	17.66			2	9.30	2		42.15
	WMd.	253	17,634	32.34			2	8.40	2		82.84
	PRR	167	11,573	16.02	1	17.28	1	5.31	1	32.83	73.33
Total		1171	81,628	\$121.77		\$ 33.19		\$245.20		\$ 67.48	\$369.57
Ill., to Milford, N. J. (Toledo, O. Pgh. Jet., O. Connellsville, Pa. York, Pa.)	Wab.	437	29,410	\$ 35.14	1	\$ 11.83	1	\$ 8.75	1	\$ 22.30	\$104.96
	W&LE	184	12,475	27.92			2	10.22	2		62.54
	P&WVa.	112	7,750	25.47			2	6.20	2		67.74
	WMd.	246	17,146	31.45			2	8.40	2		81.02
	PRR	153	10,603	14.67	1	17.28	1	5.31	1	32.83	70.78
Total		1132	77,384	\$134.65		\$ 29.11		\$258.23		\$ 55.13	\$387.04
Ill., to Milford, N. J. (Cincinnati, O., Durbin, W. Va., Hagerstown, Md.)	B&O	335	23,015	\$ 36.92	1	\$ 13.13	1	\$ 4.78	1	\$ 22.27	\$ 92.98
	C&O	441	31,796	32.37			2	7.63	2		77.24
	WMd.	236	16,449	30.17			2	8.40	2		78.42
	PRR	237	16,424	22.73	1	17.28	1	5.31	1	32.83	86.08
Total		1249	87,684	\$122.19		\$ 30.41		\$229.61		\$ 55.10	\$334.72
Ill., to Chatham, Pa.	PRR	869	60,222	\$ 83.35	2	\$ 34.56	-	\$158.26	2	\$ 65.66	\$223.92
Ill., to Chatham, Pa. (Toledo, O., Pgh. Jet., O., Connellsville, Pa., York, Pa.)	Wab.	324	21,805	\$ 26.06	1	\$ 11.83	1	\$ 8.75	1	\$ 22.30	\$ 87.85
	W&LE	184	12,475	27.92			2	10.22	2		66.13
	P&WVa.	112	7,750	25.47			2	6.20	2		87.79
	WMd.	246	17,146	31.45			2	8.40	2		43.85
	PRR	66	4,574	6.33	1	17.28	1	5.31	1	32.83	56.58
Total		932	63,750	\$117.23		\$ 29.11		\$185.22		\$ 55.13	\$327.68
Ill., to Chatham, Pa. (Cherry Run, W. Va., Hagerstown, Md.)	B&O	712	48,914	\$ 78.46	1	\$ 13.13	1	\$ 4.78	1	\$ 22.27	\$163.43
	WMd.	19	1,324	2.43			2	8.40	2		22.02
	PRR	150	10,395	14.39	1	17.28	1	5.31	1	32.83	70.24
Total		881	60,633	\$ 95.28		\$ 30.41		\$165.31		\$ 55.10	\$255.69
Ill., to Chatham, Pa. (Indianapolis, Ind., Columbus, O., Cherry Run, W. Va., Fulton Jet., Md.)	PRR	167	11,573	\$ 16.02	1	\$ 17.28	1	\$ 5.31	1	\$ 32.83	\$ 73.33
	NYC	185	12,932	16.42			2	13.94	2		66.13
	B&O	383	26,312	42.20			2	9.56	2		87.79
	WMd.	103	7,179	13.17			2	8.40	2		43.85
	PRR	75	5,198	7.19	1	17.28	1	5.31	1	32.83	56.58
Total		913	63,194	\$ 95.00		\$ 34.56		\$172.08		\$ 65.66	\$327.68



## RAILROAD BASIC DATA AND MANNER IN WHICH USED—YEAR 1940

## Pennsylvania Railroad

	Total	Non-Related	Freight	Passenger	Total	Non-Related	Freight	Passenger
Freight Revenues	\$ 363,225,857				\$ 124,491,291			
Passgr. Service Train Revenues	92,153,432				3,368,571			
Non-Related Revenues	21,047,243				4,860,310			
Total Operating Revenues	\$ 476,426,532	\$ 21,047,243	\$ 363,225,857	\$ 92,153,432	\$ 132,720,172	\$ 4,860,310	\$ 124,491,291	\$ 3,368,571
Operating Ratio	70.9				55.8			
Operating Expenses—Total	\$ 337,837,563		\$ 235,042,178	\$ 102,795,385	\$ 74,088,009		\$ 64,208,617	\$ 9,879,392
Opr. Exps. Adjusted for Non-Related Exps.	\$ 337,837,563	\$ 17,132,780	\$ 226,235,109	\$ 94,469,674	\$ 74,088,009	\$ 2,948,618	\$ 61,689,953	\$ 9,449,438
Per Cent	100.0	5.1	67.0	27.9	100.0	4.0	83.3	12.7
Railway Tax Accruals	43,781,683		33,316,955	10,464,728	18,241,188		17,042,340	1,198,846
Hire of Equipment: Freight Cars	Dr. 5,956,145		Dr. 5,956,145		Cr. 1,483,521		Cr. 1,483,521	
—Passgr. Cars	Cr. 26,813			Cr. 26,813	Cr. 109,190			Cr. 109,190
—Locomotives	Dr. 39,350		Dr. 151,914	Cr. 112,564	Cr. 51,834		Cr. 51,834	Dr. 342
—Floating Equipment	Dr. 539,106		Dr. 559,989	Cr. 20,883	Dr. 3,956		Dr. 1,956	Dr. 2,000
—Work Equipment	Dr. 9,684		Dr. 6,535	Dr. 3,149	Cr. 30,064		Cr. 30,064	Cr. 3,088
Joint Facility Rents—Net	Dr. 2,256,584		Dr. 723,417	Dr. 1,533,167	Dr. 1,025,502		Dr. 707,417	Dr. 318,085
Total Expenses	\$ 390,393,302	\$ 17,132,780	\$ 266,950,064	\$ 106,310,458	\$ 91,902,426	\$ 2,948,618	\$ 77,878,993	\$ 11,074,815
Net Railway Operating Income	\$ 86,033,230	\$ 3,914,463	\$ 96,275,793	Def. 14,157,026	\$ 40,817,746	\$ 1,911,692	\$ 46,612,298	Def. \$7,706,244
Property Invest. (Incl. Cash, Material and Supplies)	\$2,723,587,315	\$ 138,902,953	\$1,824,802,501	\$ 579,880,861	\$ 607,952,091	\$ 24,318,084	\$ 506,424,092	\$ 77,209,915
5½% Return on Investment	156,606,271	7,986,920	104,926,201	43,693,150	34,957,245	1,398,290	29,119,385	4,439,570
Shortage	70,573,041	4,072,457	8,650,408	57,850,176	5,860,501	513,402	17,492,913	12,145,814
Overage								

## Western Maryland

Freight Revenues	\$ 18,404,389				\$ 40,240,032			
Passgr. Service Train Revenues	82,166				3,669,562			
Non-Related Revenues	659,649				2,100,326			
Total Operating Revenues	\$ 19,146,204	\$ 659,649	\$ 18,404,389	\$ 82,166	\$ 46,009,920	\$ 2,100,326	\$ 40,240,032	\$ 3,669,562
Operating Ratio	64.4				75.4			
Operating Expenses—Total	\$ 12,338,781		\$ 11,751,633	\$ 587,148	\$ 34,703,784		\$ 29,386,785	\$ 5,316,999
Opr. Exps. Adjusted For Non-Related Exps.	\$ 12,338,781	\$ 369,452	\$ 11,383,373	\$ 585,956	\$ 34,703,784	\$ 1,695,836	\$ 28,070,048	\$ 4,937,900
Per Cent	100.0	3.0	92.2	4.8	100.0	4.9	80.9	14.2
Railway Tax Accruals	1,548,970		1,499,201	49,769	2,738,591		2,319,039	419,552
Hire of Equipment: Freight Cars	Cr. 182,485		Cr. 182,485		Dr. 2,215,306		Dr. 2,215,306	
—Passgr. Cars	Dr. 417		Dr. 417		Dr. 85,326		Dr. 85,326	Dr. 85,326
—Locomotives	Cr. 9,079		Cr. 9,079		Dr. 28,615		Dr. 28,615	Dr. 3,773
—Floating Equipment					Cr. 34,405		Cr. 34,405	
—Work Equipment	Cr. 7,565		Cr. 7,505	Cr. 60	Dr. 13,379		Dr. 13,379	Dr. 1,894
Joint Facility Rents—Net	Dr. 150,757		Dr. 148,143	Dr. 2,614	Dr. 1,707,608		Dr. 1,300,773	Dr. 406,835
Total Expenses	\$ 13,839,796	\$ 369,452	\$ 12,831,648	\$ 638,696	\$ 41,458,564	\$ 1,695,836	\$ 33,907,448	\$ 5,855,280
Net Railway Operating Income	\$ 5,306,408	\$ 290,197	\$ 5,572,741	Def. 556,530	\$ 4,551,356	\$ 404,490	\$ 6,332,584	Def. 2,185,718
Property Invest. (Incl. Cash, Material and Supplies)	\$ 174,722,515	\$ 5,241,675	\$ 161,094,159	\$ 8,386,681	\$ 307,368,743	\$ 15,061,068	\$ 248,661,313	\$ 43,646,362
5½% Return on Investment	10,046,545	301,396	9,262,915	482,234	17,673,703	866,011	14,298,026	2,509,666
Shortage	4,740,137	11,199	3,690,174	1,038,764	13,122,347	461,521	7,965,442	4,695,384
Overage								

## Wheeling &amp; Lake Erie

Freight Revenues	\$ 16,120,953				\$ 3,989,028			
Passgr. Service Train Revenues					725			
Non-Related Revenues	876,613				68,220			
Total Operating Revenues	\$ 16,997,566	\$ 876,613	\$ 16,120,950		\$ 4,057,973	\$ 68,220	\$ 3,989,028	\$ 725
Operating Ratio	66.5				75.9			
Operating Expenses—Total	\$ 11,304,166		\$ 11,304,166		\$ 3,079,275		\$ 3,077,806	\$ 1,469
Opr. Exps. Adjusted For Non-Related Exps.	\$ 11,304,166	\$ 582,948	\$ 10,721,218		\$ 3,079,275	\$ 50,664	\$ 3,027,152	\$ 1,459
Per Cent	100.0	5.2	94.8		100.0	1.6	98.35	.05
Railway Tax Accruals	2,472,668		2,472,668		302,311		302,311	
Hire of Equipment: Freight Cars	Cr. 1,045,391				Cr. 1,045,391			

## Chesapeake &amp; Ohio

	Total	Non-Related	Freight	Passenger	Total	Non-Related	Freight	Passenger
Freight Revenues	\$ 363,225,857				\$ 124,491,291			
Passgr. Service Train Revenues	92,153,432				3,368,571			
Non-Related Revenues	21,047,243				4,860,310			
Total Operating Revenues	\$ 476,426,532	\$ 21,047,243	\$ 363,225,857	\$ 92,153,432	\$ 132,720,172	\$ 4,860,310	\$ 124,491,291	\$ 3,368,571
Operating Ratio	70.9				55.8			
Operating Expenses—Total	\$ 337,837,563		\$ 235,042,178	\$ 102,795,385	\$ 74,088,009		\$ 64,208,617	\$ 9,879,392
Opr. Exps. Adjusted for Non-Related Exps.	\$ 337,837,563	\$ 17,132,780	\$ 226,235,109	\$ 94,469,674	\$ 74,088,009	\$ 2,948,618	\$ 61,689,953	\$ 9,449,438
Per Cent	100.0	5.1	67.0	27.9	100.0	4.0	83.3	12.7
Railway Tax Accruals	43,781,683		33,316,955	10,464,728	18,241,188		17,042,340	1,198,846
Hire of Equipment: Freight Cars	Dr. 5,956,145		Dr. 5,956,145		Cr. 1,483,521		Cr. 1,483,521	
—Passgr. Cars	Cr. 26,813			Cr. 26,813	Cr. 109,190		Cr. 109,190	Dr. 109,190
—Locomotives	Dr. 39,350		Dr. 151,914	Cr. 112,564	Cr. 51,834		Cr. 51,834	Dr. 342
—Floating Equipment	Dr. 539,106		Dr. 559,989	Cr. 20,883	Dr. 3,956		Dr. 1,956	Dr. 2,000
—Work Equipment	Dr. 9,684		Dr. 6,535	Dr. 3,149	Cr. 30,064		Cr. 30,064	Cr. 3,088
Joint Facility Rents—Net	Dr. 2,256,584		Dr. 723,417	Dr. 1,533,167	Dr. 1,025,502		Dr. 707,417	Dr. 318,085
Total Expenses	\$ 390,393,302	\$ 17,132,780	\$ 266,950,064	\$ 106,310,458	\$ 91,902,426	\$ 2,948,618	\$ 77,878,993	\$ 11,074,815
Net Railway Operating Income	\$ 86,033,230	\$ 3,914,463	\$ 96,275,793	Def. 14,157,026	\$ 40,817,746	\$ 1,911,692	\$ 46,612,298	Def. \$7,706,244
Property Invest. (Incl. Cash, Material and Supplies)	\$2,723,587,315	\$ 138,902,953	\$1,824,802,501	\$ 579,880,861	\$ 607,952,091	\$ 24,318,084	\$ 506,424,092	\$ 77,209,915
5½% Return on Investment	156,606,271	7,986,920	104,926,201	43,693,150	34,957,245	1,398,290	29,119,385	4,439,570
Shortage	70,573,041	4,072,457	8,650,408	57,850,176	5,860,501	513,402	17,492,913	12,145,814
Overage								

## Western Maryland

Freight Revenues	\$ 18,404,389				\$ 40,240,032			
Passgr. Service Train Revenues	82,166				3,669,562			
Non-Related Revenues	659,649				2,100,326			
Total Operating Revenues	\$ 19,146,204	\$ 659,649	\$ 18,404,389	\$ 82,166	\$ 46,009,920	\$ 2,100,326	\$ 40,240,032	\$ 3,669,562
Operating Ratio	64.4				75.4			
Operating Expenses—Total	\$ 12,338,781		\$ 11,751,633	\$ 587,148	\$ 34,703,784		\$ 29,386,785	\$ 5,316,999
Opr. Exps. Adjusted For Non-Related Exps.	\$ 12,338,781	\$ 369,452	\$ 11,383,373	\$ 585,956	\$ 34,703,784	\$ 1,695,836	\$ 28,070,048	\$ 4,937,900
Per Cent	100.0	3.0	92.2	4.8	100.0	4.9	80.9	14.2
Railway Tax Accruals	1,548,970		1,499,201	49,769	2,738,591		2,319,039	419,552
Hire of Equipment: Freight Cars	Cr. 182,485		Cr. 182,485		Dr. 2,215,306		Dr. 2,215,306	
—Passgr. Cars	Dr. 417		Dr. 417		Dr. 85,326		Dr. 85,326	Dr. 85,326
—Locomotives	Cr. 9,079		Cr. 9,079		Dr. 28,615		Dr. 28,615	Dr. 3,773
—Floating Equipment					Cr. 34,405		Cr. 34,405	
—Work Equipment	Cr. 7,565		Cr. 7,505	Cr. 60	Dr. 13,379		Dr. 13,379	Dr. 1,894
Joint Facility Rents—Net	Dr. 150,757		Dr. 148,143	Dr. 2,614	Dr. 1,707,608		Dr. 1,300,773	Dr. 406,835
Total Expenses	\$ 13,839,796	\$ 369,452	\$ 12,831,648	\$ 638,696	\$ 41,458,564	\$ 1,695,836	\$ 33,907,448	\$ 5,855,280
Net Railway Operating Income	\$ 5,306,408	\$ 290,197	\$ 5,572,741	Def. 556,530	\$ 4,551,356	\$ 404,490	\$ 6,332,584	Def. 2,185,718
Property Invest. (Incl. Cash, Material and Supplies)	\$ 174,722,515	\$ 5,241,675	\$ 161,094,159	\$ 8,386,681	\$ 307,368,743	\$ 15,061,068	\$ 248,661,313	\$ 43,646,362
5½% Return on Investment	10,046,545	301,396	9,262,915	482,234	17,673,703	866,011	14,298,026	2,509,666
Shortage	4,740,137	11,199	3,690,174	1,038,764	13,122,347	461,521	7,965,442	4,695,384
Overage								

## Wheeling &amp; Lake Erie

Freight Revenues	\$ 16,120,953				\$ 3,989,028			
Passgr. Service Train Revenues					725			
Non-Related Revenues	876,613				68,220			
Total Operating Revenues	\$ 16,997,566	\$ 876,613	\$ 16,120,950		\$ 4,057,973	\$ 68,220	\$ 3,989,028	\$ 725
Operating Ratio	66.5				75.9			
Operating Expenses—Total	\$ 11,304,166		\$ 11,304,166		\$ 3,079,275		\$ 3,077,806	\$ 1,469
Opr. Exps. Adjusted For Non-Related Exps.	\$ 11,304,166	\$ 582,948	\$ 10,721,218		\$ 3,079,275	\$ 50,664	\$ 3,027,152	\$ 1,459
Per Cent	100.0	5.2	94.8		100.0	1.6	98.35	.05
Railway Tax Accruals	2,472,668		2,472,668		302,311		302,311	
Hire of Equipment: Freight Cars	Cr. 1,045,391				Cr. 1,045,391			

## Pittsburgh &amp; West Virginia



Overage.....

Freight Revenues.....	\$ 16,120,953	Wheeling & Lake Erie			\$ 3,989,028	Pittsburgh & West Virginia	
Passgr. Service Train Revenues.....	-				725		
Non-Related Revenues.....	876,613				68,220		
Total Operating Revenues.....	\$ 16,997,566	\$ 876,613	\$ 16,120,950	-	\$ 4,057,973	\$ 68,220	\$ 3,989
Operating Ratio.....	66.5				75.9		
Operating Expenses—Total.....	\$ 11,304,166		\$ 11,304,166		\$ 3,079,275		\$ 3,077
Opr. Exps. Adjusted For Non-Related Exps.....	\$ 11,304,166	\$ 582,948	\$ 10,721,218	-	\$ 3,079,275	\$ 50,664	\$ 3,027
Per Cent.....	100.0	5.2	94.8	-	100.0	1.6	98.1
Railway Tax Accruals.....	2,472,668		2,472,668	-	302,311		302
Hire of Equipment: Freight Cars.....	Cr. 1,045,391		Cr. 1,045,391		Cr. 152,363		Cr. 152
—Passgr. Cars.....	-				-		
—Locomotives.....	Cr. 32,399		Cr. 32,399		Dr. 22,343		Dr. 22
—Floating Equipment.....	-				-		
—Work Equipment.....	Cr. 2,965		Cr. 2,965		Dr. 182		Dr. 25
Joint Facility—Rents.....	Cr. 43,246		Cr. 43,246	-	Dr. 25,838		Dr. 25
Total Expenses.....	\$ 12,652,833	\$ 582,948	\$ 12,069,885	-	\$ 3,277,586	\$ 50,664	\$ 3,225
Per Cent.....	-			-	-		
Net Railway Operating Income.....	\$ 4,344,733	\$ 293,665	\$ 4,051,068	-	\$ 780,387	\$ 17,556	\$ 763
Property Invst. (Incl. Cash, Material and Supplies).....	\$ 100,948,724	\$ 5,249,334	\$ 95,699,390	-	\$ 57,426,997	\$ 918,832	\$ 56,479
5¾% Return on Investment.....	5,804,552	301,837	5,502,715	-	3,302,052	52,833	3,247
Shortage.....	1,459,819	8,172	1,451,647	-	2,521,665	35,277	2,484
Overage.....	-	-	-	-	-	-	-
Freight Revenues.....	\$ 158,005,441	Baltimore & Ohio			\$ 57,758,198	Reading Company	
Passgr. Service Train Revenues.....	16,020,874				4,095,013		
Non-Related Revenues.....	5,149,150				1,904,470		
Total Operating Revenues.....	\$ 179,175,465	\$ 5,149,150	\$ 150,005,441	\$ 16,020,874	\$ 63,757,681	\$ 1,904,470	\$ 57,758
Operating Ratio.....	74.1				69.1		
Operating Expenses—Total.....	\$ 132,600,799		\$ 105,139,150	\$ 27,461,649	\$ 44,031,224		\$ 35,978
Opr. Exps. Adjusted For Non-Related Exps.....	\$ 132,600,799	\$ 4,630,348	\$ 102,192,156	\$ 25,778,295	\$ 44,031,224	\$ 1,338,100	\$ 34,796
Per Cent.....	100.0	3.5	77.1	19.4	100.0	3.0	79.1
Railway Tax Accruals.....	11,645,695		9,318,246	2,327,449	5,538,390		4,832
Hire of Equipment: Freight Cars.....	Dr. 2,545,947		Dr. 2,545,947		Dr. 779,736		Dr. 779
—Passgr. Cars.....	Dr. 122,854			Dr. 122,854	Cr. 73,584		
—Locomotives.....	Cr. 8,926		Cr. 18,862	Dr. 9,936	Dr. 3		Dr. 9
—Floating Equipment.....	Dr. 124		Dr. 124		Dr. 80,458		Dr. 80
—Work Equipment.....	Cr. 15,540		Cr. 13,088	Cr. 2,452	Cr. 1,713		Cr. 1
Joint Facility Rents—Net.....	Dr. 1,666,001		Dr. 454,018	Dr. 1,211,983	Cr. 40,028		Dr. 181
Total Expenses.....	\$ 148,556,954	\$ 4,630,348	\$ 114,478,541	\$ 29,448,065	\$ 50,314,486	\$ 1,338,100	\$ 40,678
Net Railway Operating Income.....	\$ 30,618,511	\$ 518,802	\$ 43,526,900	Def 13,427,191	\$ 13,443,195	\$ 566,370	\$ 17,079
Property Invst. (Incl. Cash, Material and Supplies).....	\$1,025,132,268	\$ 35,879,629	\$ 790,376,979	\$ 198,875,660	\$ 449,894,451	\$ 13,496,833	\$ 355,866
5¾% Return on Investment.....	58,945,105	2,063,079	45,446,676	11,435,350	25,868,931	776,068	20,462
Shortage.....	28,326,594	1,544,277	1,919,776	24,862,541	12,425,736	209,698	3,382
Overage.....	-	-	-	-	-	-	-

## RAILROAD BASIC DATA AND MANNER IN WHICH USED—YEAR 1940

## PITTSBURGH &amp; LAKE ERIE R.R.

	Total	Non-Related	Freight	Passenger		Total	Revenue	Non-Revenue
Revenues	\$ 22,803,883	\$	\$	\$	Loaded Freight Car Miles	39,237,873	38,413,623	824,250
	615,874				Empty Freight Car Miles	25,512,183	24,893,995	618,188
	527,281				Total Freight Car Miles	64,750,056	63,307,618	1,442,438
					Per Cent.	100.0	97.8	2.2
	\$ 23,947,038	\$ 527,281	\$ 22,803,883	\$ 615,874	Caboose Car Miles	976,717	955,229	21,488
	76.1				Total Car Miles	65,726,773	64,262,847	1,463,926
	\$ 18,231,615	\$	\$ 16,115,445	\$ 2,116,170	Revenue Tons Carried	32,977,150		
Non-Related Exps.	\$ 18,231,615	\$ 408,670	\$ 15,735,700	\$ 2,087,245	Net Ton Miles (Thous.)	1,930,803	1,897,833	32,970
					Tare Ton Miles (Thous.)	1,454,473	1,422,475	31,998
	100.0	2.2	86.3	11.5	Caboose Ton Miles—15 Tons (Thous.)	14,651	14,329	322
	3,084,989		2,915,072	169,917	Total Gross Ton Miles (Excl. Locos. and Tenders) (Thous.)	3,399,927	3,334,637	65,290
ght Cars	Cr. 2,663,944		Cr. 2,663,944	Cr. 65,361	Average Haul		57.6	
gr Cars	Cr. 65,361		Cr. 165,391	Cr. 20,012				
omotives	Cr. 185,403							
ting Equipment			Cr. 4,089	Dr. 413				
k Equipment	Cr. 3,676		Cr. 68,600	Dr. 25,893				
et	Cr. 42,707							
	\$ 18,355,513	\$ 408,670	\$ 15,748,748	\$ 2,198,095				
Income	\$ 5,591,525	\$ 118,611	\$ 7,055,135	Def. 1,582,221				
Cash, Material and Sup-	\$ 129,201,796	\$ 2,842,440	\$ 111,501,150	\$ 14,858,206				
ment	7,429,103	163,440	6,411,316	854,347				
	1,837,578	44,829	—	2,436,568				
			643,819					

Selected Yd. & Sta. Exps. (Yd. Prop. Accts. 202-222, Ex. Depr., 227, 373, 376-391, Yd. Prop. 308)-Frt.	\$ 4,697,295
Selected Road Frt. Exps. (Rd. Prop. Accts. 202-222, Ex. Depr., 392-402, 412-413, Rd. Prop. 308)	\$ 3,734,271
Adjustment For Train Switching:	
(a) Yard Exps.-Frt. (Yd. Prop. 308; 378-389)	\$ 3,404,394
(b) Yd. Switching Loco. Miles-Frt.	2,852,178
(c) Exps. Per Loco. Miles (a÷b)	\$ 1.194
(d) Train Switching Loco. Miles-Frt.	107,784
(e) Train Switching Exps. Adjusted (d×c)	\$ 128,694
Adj. For Intermediate Classification:	
(a) Yd. Frt. Exps. (Yd. Prop. 202-222, Ex. Depr., 377-389; Yd. Prop. 308)	\$ 4,168,138
(b) Carload Units (Sch. 540AR Cols. b+d)+b+f)+70% f+h)+dth)+LCL)	1,164,390
(c) Exps. Per Carload Unit (a÷b)	\$ 3.581
(d) 0.17 Times Carload Unit Exps. (0.17×c)	\$ .609
(e) Average Haul—Revenue Freight	57.6
(f) Average Haul Bet. Intermediate Yardings	71.9
(g) Number Intermediate Yardings	—
(h) Classification Exps. Adjusted	\$ 98,973
Adj. Selected Yard & Sta. Exps.-Frt. (1+3(e)-4h)	\$ 4,727,016
Adj. Selected Road Exps.-Frt. (2-3e+4h)	\$ 3,704,550
Total Yard & Road Expenses (5+6)	\$ 8,431,566
Per Cent. Yard is of Tot. Exps. (5÷7)	56.1
Per Cent. Road is of Tot. Exps. (6÷7)	43.9
Total Freight Operating Expenses	\$ 15,735,700
Terminal Prop. Frt. Opr. Exps. (10×8)	\$ 8,827,727
L.C.L. Tons	146,796
LCL Platform & Clerical Costs (12×13a)	\$ 234,874
(a) LCL Plat. & Clerical Cost Per Ton (FCT Mdse. Traffic Report, Exh. 112F, P. 243)	\$ 1.60

14. Term. Prop. Frt. Opr. Exps.-CL (11-13)	\$ 8,592,853
15. Carload Units (Sch. 541-AR-Excl LCL):	
(a) Originated (Cols. b and d)	320,213
(b) Terminated (Cols. b and f)	312,071
(c) Received from Connections (f+h)	331,640
(d) Delvd. to Connections (d+h)	339,752
(e) Total Carloads (15a+15b+70% (15c+15d))	1,102,237
16. Ratio to Carload Units of Total Originated and Terminated (15÷ into (15a+15b))	57.4
17. Ratio Carloads Interchanged to Total (100%—Item 16)	42.6
18. Terminal Cost Per Carload (14÷15e)×16)200%	8.95
19. Interchange Cost Per CL(70%14÷15e×17) 200%	4.65
20. Road Prop. Frt. Opr. Exps. (10×9)	\$ 6,907,972
21. Gross Ton Miles—Revenue (Thous.)	\$ 3,334,637
22. Road Cost Per 1000 Gross Ton Mi. (20÷21)	\$ 2.072
23. Investment (Incl. Cash, Matl. & Supplies) Frt. Service	\$111,501,150
24. 5¾% Return On Investment	\$ 6,411,316
25. Passenger Deficiency	\$ 2,436,568
26. Tot. Frt. Opr. Exps., Rents, 5¾% Return	\$ 22,160,064
27. Tot. Frt. Opr. Exps., Rents, 5¾% Pass. Def.	\$ 24,596,632
28. Per Cent. Item 26 of Item 10	1.408
29. Per Cent. Item 27 of Item 10	1.563
30. Term. Cost Per Car Inc. Ovhd. Ex. Pass. Def. (Item 28 18×28)	\$ 12.60
31. Term. Cost Per Car Inc. All Ovhd. (18×29)	\$ 13.99
32. Interchg. Cost Per Car, Inc. Ovhd., Except Pass. Def. (19×28)	\$ 6.55
33. Interchg. Cost Per Car, Inc. All Ovhd. (19×29)	\$ 7.27
34. Road Cost Per 1000 GTM Inc. Ovhd., Except Pass. Def. (22×28)	\$ 2.917
35. Road Cost Per 1000 GTM Inc. All Ovhd. (22×29)	\$ 3.239



## EXHIBIT No. 69

Statement Showing for 33 Tons of Grain and Grain Products Moving from Western Origins to Hagerstown, Md. via Various Routes, and 1.34 Cars of Grain Products at 24.6 Tons Per Car Moved Outbound from Hagerstown to Different Destinations in the East, the Comparative Costs for Transportation over the Specified Routes. Tare Weight of Car Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

	Route	Miles	Gross Ton Miles	Cost—Opr. Exps. Only					Cost—Opr. Exps., Rent, 5 3/4% R				
				Road	Terminal No.	Amount	Interchange No.	Amount	Total	Road	Terminal No.	Amount	Int.
A. Chicago, Ill., to Salisbury, Md.	PRR	1051	74,585	\$103.23	4.68	\$80.87	—	—	\$184.10	\$196.01	4.68	\$153.64	—
B. Chicago, Ill., to Salisbury, Md.	NYC	415	29,009	\$ 36.84	1.	\$15.91	1.	\$ 6.97	\$ 59.72	\$ 80.24	1.	\$ 34.65	1.
(NYC to Youngstown, O.	P&LE	123	8,524	17.66			2.	9.30	26.96	27.61			2.
P&LE to Connellsville, Pa.	W. Md.	246	18,568	34.05	2.34	8.00	2.34	9.83	51.88	69.24	2.34	16.26	2.34
W. Md. to York, Pa.)	PRR	174	16,147	22.35	1.34	23.16	1.34	7.11	52.62	42.43	1.34	43.99	1.34
	Total	958	72,248	\$110.90		\$47.07		\$33.21	\$191.18	\$219.52		\$ 94.90	
C. Chicago, Ill., to Salisbury, Md.	Wab.	234	15,748	\$ 18.82	1.	\$11.83	1.	\$ 8.75	\$ 39.40	\$ 35.43	1.	\$ 22.30	1.
(Wab. to Toledo, O.	W&LE	184	12,475	46.74			2.	10.22	56.96	45.78			2.
W&LE to Pgh. Jet., O.	P&WVa.	112	7,750	25.47			2.	6.20	31.67	54.48			2.
P&WVa. to Connellsville, Pa.	W. Md.	253	19,649	36.04	2.34	8.00	2.34	9.83	53.87	73.27	2.34	16.26	2.34
W. Md. to Fulton Jet., Md.)	PRR	155	14,384	19.91	1.34	23.16	1.34	7.11	50.18	37.80	1.34	43.99	1.34
	Total	938	70,006	\$146.98		\$42.99		\$ 42.11	\$232.08	\$246.76		\$ 52.55	
D. Chicago, Ill., to Salisbury, Md.	C&O	726	52,345	\$ 52.29	1.	\$ 10.97	1.	\$ 3.82	\$ 67.08	\$102.91	1.	\$ 21.18	1.
(C&O to Durbin, W. Va.	W. Md.	236	16,449	30.17	1.	3.42	1.	4.20	37.79	61.34	1.	6.95	1.
W. Md. to Hagerstown, Md.)	PRR	260	24,128	33.39	2.68	46.31	—	—	79.70	63.41	2.68	87.98	—
	Total	1222	92,922	\$115.85		\$ 60.70		\$ 8.02	\$184.57	\$227.66		\$116.11	
E. Chicago, Ill., to Salisbury, Md.	M. Cent.	334	23,347	\$ 29.65	1.	\$ 15.91	1.	\$ 6.97	\$ 52.53	\$ 64.58	1.	\$ 34.65	1.
(Mich. Cent. to Toledo, O.	C&O	319	23,000	23.41			2.	7.63	31.04	45.22			2.
C&O to Charleston, W. Va.	B&O	181	12,435	19.95			2.	9.56	29.51	33.82			2.
B&O to Norton, W. Va.	W. Md.	280	21,531	39.49	2.34	8.00	2.34	9.83	57.32	80.29	2.34	16.26	2.34
W. Md. to Fulton Jet., Md.)	PRR	155	14,384	19.91	1.34	23.16	1.34	7.11	50.18	37.80	1.34	43.99	1.34
	Total	1269	94,697	\$132.41		\$ 47.07		\$ 41.10	\$220.58	\$261.71		\$ 94.90	
F. Peoria, Ill., to Dagsboro, Del.	PRR	1206	85,327	\$117.97	4.68	\$ 80.87	—	—	\$198.84	\$224.24	4.68	\$153.64	—
G. Peoria, Ill., to Dagsboro, Del.	NYC	588	41,101	\$ 52.20	1.	\$15.91	1.	\$ 6.97	75.08	\$113.69	1.	\$ 34.65	1.
(NYC to Youngstown, O. via Cleveland	P&LE	123	8,524	17.66			2.	9.30	26.96	27.61			2.
P&LE to Connellsville, Pa.	W. Md.	253	19,649	36.04	2.34	8.00	2.34	9.83	53.87	73.27	2.34	16.26	2.34
W. Md. to Fulton Jet., Md.)	PRR	156	14,384	19.91	1.34	23.16	1.34	7.11	50.18	37.80	1.34	43.99	1.34
	Total	1120	83,658	\$125.81		\$ 47.07		\$ 33.21	\$206.09	\$252.37		\$ 94.90	
H. Peoria, Ill., to Dagsboro, Del.	PRR	246	17,048	\$ 23.59	1.	\$ 17.28	1.	\$ 5.31	\$ 46.18	\$ 44.80	1.	\$ 32.83	1.
(PRR to Indianapolis, Ind.	NYC	110	7,689	9.77			2.	13.94	23.71	21.27			2.
NYC to Cincinnati, O.	C&O	440	31,724	32.30			2.	7.63	39.93	62.37			2.
C&O to Durbin, W. Va.	W. Md.	313	23,238	42.62	2.34	8.00	2.34	9.83	60.45	86.65	2.34	16.26	2.34
W. Md. to York, Pa.)	PRR	172	15,962	22.09	1.34	23.16	1.34	7.11	52.36	41.95	1.34	43.99	1.34
	Total	1281	95,661	\$130.37		\$ 48.44		\$ 43.82	\$222.63	\$257.04		\$ 93.08	
I. Peoria, Ill., to Dagsboro, Del.	PRR	246	17,048	\$ 23.59	1.	\$ 17.28	1.	\$ 5.31	\$ 46.18	\$ 44.80	1.	\$ 32.83	1.
(PRR to Indianapolis, Ind.	NYC	185	12,932	16.42			2.	13.94	30.36	35.77			2.
NYC to Columbus, O.	B&O	383	26,312	42.20			2.	9.56	51.76	71.57			2.
B&O to Cherry Run, W. Va.	W. Md.	19	1,324	2.43	1.	3.42	1.	4.20	10.05	4.94	1.	6.95	1.
W. Md. to Hagerstown, Md.)	PRR	258	23,942	33.14	2.68	46.31	—	—	79.45	62.92	2.68	87.98	—
	Total	1091	81,558	\$117.78		\$ 67.01		\$ 33.01	\$217.80	\$220.00		\$127.76	

Statement Showing  
at 24.6 Tons Per Car  
Tare Weight of Car

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town, Md.)

## EXHIBIT No. 69

for 33 Tons of Grain and Grain Products Moving from Western Origins to Hagerstown, Md. via Various Routes, and 1.34 Cars of Grain Products  
 ar Moved Outbound from Hagerstown to Different Destinations in the East, the Comparative Costs for Transportation over the Specified Routes.  
 r Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

Route PRR	Miles 1051	Gross Ton Miles 74,585	Cost—Opr. Exps. Only						Cost—Opr. Exps., Rent, 5¾% Return and Pass. Defcy.					
			Road	No.	Terminal Amount	No.	Interchange Amount	Total	Road	No.	Terminal Amount	No.	Interchange Amount	Total
			\$103.23	4.68	\$80.87	—	—	\$184.10	\$196.01	4.68	\$153.64	—	—	\$349.65
NYC	415	29,009	\$ 36.84	1.	\$15.91	1.	\$ 6.97	\$ 59.72	\$ 80.24	1.	\$ 34.65	1.	\$15.18	\$130.07
P&LE	123	8,524	17.66			2.	9.30	26.96	27.61			2.	14.54	42.15
W. Md.	246	18,568	34.05	2.34	8.00	2.34	9.83	51.88	69.24	2.34	16.26	2.34	19.98	105.48
PRR	174	16,147	22.35	1.34	23.16	1.34	7.11	52.62	42.43	1.34	43.99	1.34	13.52	99.94
Total	958	72,248	\$110.90		\$47.07		\$33.21	\$191.18	\$219.52		\$ 94.90		\$63.22	\$377.64
Wab.	234	15,748	\$ 18.82	1.	\$11.83	1.	\$ 8.75	\$ 39.40	\$ 35.43	1.	\$ 22.30	1.	\$ 16.49	\$ 74.22
W&LE	184	12,475	46.74			2.	10.22	56.96	45.78			2.	16.76	62.54
P&WVa.	112	7,750	25.47			2.	6.20	31.67	54.48			2.	13.26	67.74
W. Md.	253	19,649	36.04	2.34	8.00	2.34	9.83	53.87	73.27	2.34	16.26	2.34	19.98	109.51
PRR	155	14,384	19.91	1.34	23.16	1.34	7.11	50.18	37.80	1.34	43.99	1.34	13.52	95.31
Total	938	70,006	\$146.98		\$42.99		\$ 42.11	\$232.08	\$246.76		\$ 82.55		\$ 80.01	\$409.32
C&O	726	52,345	\$ 52.29	1.	\$ 10.97	1.	\$ 3.82	\$ 67.08	\$102.91	1.	\$ 21.18	1.	\$ 7.37	\$131.46
W. Md.	236	16,449	30.17	1.	3.42	1.	4.20	37.79	61.34	1.	6.95	1.	8.54	76.83
PRR	260	24,128	33.39	2.68	46.31	—	—	79.70	63.41	2.68	87.98	—	—	151.39
Total	1222	92,922	\$115.85		\$ 60.70		\$ 8.02	\$184.57	\$227.66		\$116.11		\$ 15.91	\$359.68
M. Cent.	334	23,347	\$ 29.65	1.	\$ 15.91	1.	\$ 6.97	\$ 52.53	\$ 64.58	1.	\$ 34.65	1.	\$ 15.18	\$114.41
C&O	319	23,000	23.41			2.	7.63	31.04	45.22			2.	14.73	59.95
B&O	181	12,435	19.95			2.	9.56	29.51	33.82			2.	16.22	50.04
W. Md.	280	21,531	39.49	2.34	8.00	2.34	9.83	57.32	80.29	2.34	16.26	2.34	19.98	116.53
PRR	155	14,384	19.91	1.34	23.16	1.34	7.11	50.18	37.80	1.34	43.99	1.34	13.52	95.31
Total	1269	94,697	\$132.41		\$ 47.07		\$ 41.10	\$220.58	\$261.71		\$ 94.90		\$ 79.63	\$436.24
PRR	1206	85,327	\$117.97	4.68	\$ 80.87	—	—	\$198.84	\$224.24	4.68	\$153.64	—	—	\$377.88
NYC	588	41,101	\$ 52.20	1.	\$15.91	1.	\$ 6.97	75.08	\$113.69	1.	\$ 34.65	1.	\$ 15.18	\$163.52
P&LE	123	8,524	17.66			2.	9.30	26.96	27.61			2.	14.54	42.15
W. Md.	253	19,649	36.04	2.34	8.00	2.34	9.83	53.87	73.27	2.34	16.26	2.34	19.98	109.51
PRR	156	14,384	19.91	1.34	23.16	1.34	7.11	50.18	37.80	1.34	43.99	1.34	13.52	95.31
Total	1120	83,658	\$125.81		\$ 47.07		\$ 33.21	\$206.09	\$252.37		\$ 94.90		\$ 63.22	\$410.49
PRR	246	17,048	\$ 23.59	1.	\$ 17.28	1.	\$ 5.31	\$ 46.18	\$ 44.80	1.	\$ 32.83	1.	\$ 10.09	\$ 87.72
NYC	110	7,689	9.77			2.	13.94	23.71	21.27			2.	30.36	51.63
C&O	440	31,724	32.30			2.	7.63	39.93	62.37			2.	14.73	77.10
W. Md.	313	23,238	42.62	2.34	8.00	2.34	9.83	60.45	86.65	2.34	16.26	2.34	19.98	122.89
PRR	172	15,962	22.09	1.34	23.16	1.34	7.11	52.36	41.95	1.34	43.99	1.34	13.52	99.46
Total	1281	95,661	\$130.37		\$ 48.44		\$ 43.82	\$222.63	\$257.04		\$ 93.08		\$ 88.68	\$438.80
PRR	246	17,048	\$ 23.59	1.	\$ 17.28	1.	\$ 5.31	\$ 46.18	\$ 44.80	1.	\$ 32.83	1.	\$ 10.09	\$ 87.27
NYC	185	12,932	16.42			2.	13.94	30.36	35.77			2.	30.36	66.13
B&O	383	26,312	42.20			2.	9.56	51.76	71.57			2.	16.22	87.79
W. Md.	19	1,324	2.43	1.	3.42	1.	4.20	10.05	4.94	1.	6.95	1.	8.54	20.43
PRR	258	23,942	33.14	2.68	46.31	—	—	79.45	62.92	2.68	87.98	—	—	150.90
Total	1091	81,558	\$117.78		\$ 67.01		\$ 33.01	\$217.80	\$220.00		\$127.76		\$ 65.21	\$412.97



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Statement Showing for 33 Tons of Grain and Grain Products Moving from Western Origins to Hagerstown, Md., via Various Routes, and 1.34 Cars of Grain Products at 24.6 Tons Per Car Moved Outbound from Hagerstown to Different Destinations in the East, the Comparative Costs for Transportation over the Specified Routes. Tare Weight of Car Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

	Route	Miles	Gross Ton Miles	Cost—Opr. Exprs. Only					Cost—Opr. Exprs., Rents, 5¼% Return and Pass. Defcy.					Total
				Road	Terminal		Interchange	Amount	No.	Terminal		Interchange	Amount	No.
					No.	Amount				No.	Amount			
J. E. St. Louis, Ill., to Milford, N. J.	PRR	1176	83,248	\$115.22	4.68	\$ 80.87	—	—	—	—	—	—	—	—
K. E. St. Louis, Ill., to Milford, N. J.	NYC	628	43,897	55.75	1.	15.91	1.	\$ 6.97	—	—	—	—	—	—
(NYC to Youngstown, O. via Cleveland	P&LE	123	8,524	17.66	—	—	2.	9.30	—	—	—	2.	14.54	—
P&LE to Connellsville, Pa.	W. Md.	253	19,649	35.94	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	—
W. Md. to Fulton Jet., Md.)	PRR	167	15,498	21.45	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	—
Total		1171	87,568	\$130.80		\$ 47.97		\$ 33.21					\$ 63.22	\$42
L. E. St. Louis, Ill., to Milford, N. J.	Wab.	437	29,410	\$ 35.14	1.	\$ 11.83	1.	\$ 8.75	—	—	—	1.	\$ 16.49	\$104
(Wab. to Toledo, O.	W&LE	184	12,475	27.92	—	—	2.	10.22	—	—	—	2.	16.76	62
W&LE to Pgh. Jet., O.	P&WVa.	112	7,750	25.47	—	—	2.	6.20	—	—	—	2.	13.26	67
P&WVa. to Connellsville, Pa.	W. Md.	246	18,568	34.05	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	105
W. Md. to York, Pa.)	PRR	153	14,198	19.65	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	94
Total		1132	82,401	\$142.23		\$ 42.99		\$ 42.11					\$ 80.01	\$43
M. E. St. Louis, Ill., to Milford, N. J.	B&O	335	23,015	\$ 36.92	1.	\$ 13.13	1.	\$ 4.78	—	—	—	1.	\$ 8.11	\$ 92
(B&O to Cincinnati, O.	C&O	441	31,796	32.37	—	—	2.	7.64	—	—	—	2.	14.73	77
C&O to Durbin, W. Va.	W. Md.	236	16,449	30.17	1.	3.42	1.	4.20	—	—	—	1.	8.54	76
W. Md. to Hagerstown, Md.)	PRR	237	21,994	30.44	2.68	46.31	—	—	—	—	—	—	—	145
Total		1249	93,254	\$129.90		\$ 62.86		\$ 16.62					\$ 31.38	\$39
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N. Decatur, Ill., to Chatham, Pa.	PRR	1018	72,299	\$100.06	4.68	\$ 80.87	—	—	—	—	—	—	—	\$34
O. Decatur, Ill., to Chatham, Pa.	Wab.	324	21,805	\$ 26.06	1.	\$ 11.83	1.	\$ 8.75	—	—	—	1.	\$ 16.49	\$ 87
(Wab. to Toledo, O.	W&LE	184	12,475	27.92	—	—	2.	10.22	—	—	—	2.	16.76	62
W&LE to Pgh. Jet., O.	P&WVa.	112	7,750	25.47	—	—	2.	6.20	—	—	—	2.	13.26	67
P&WVa. to Connellsville, Pa.	W. Md.	246	18,568	34.05	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	105
W. Md. to York, Pa.)	PRR	66	6,125	8.48	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	73
Total		932	66,723	\$121.98		\$ 42.99		\$ 42.11					\$ 80.01	\$39
P. Decatur, Ill., to Chatham, Pa.	B&O	712	48,914	\$ 78.46	1.	\$ 13.13	1.	\$ 4.78	—	—	—	1.	\$ 8.11	\$163
(B&O to Cherry Run, W. Va.	W. Md.	19	1,324	2.43	1.	3.42	1.	4.20	—	—	—	1.	8.54	20
W. Md. to Hagerstown, Md.)	PRR	150	13,920	19.27	2.68	46.31	—	—	—	—	—	—	—	124
Total		881	64,158	\$100.16		\$ 62.86		\$ 8.98					\$ 16.65	\$30
Q. Decatur, Ill., to Chatham, Pa.	PRR	167	11,573	\$ 16.02	1.	\$ 17.28	1.	\$ 5.31	—	—	—	1.	\$ 10.09	\$ 73
(PRR to Indianapolis, Ind.	NYC	185	12,932	16.42	—	—	2.	13.94	—	—	—	2.	30.36	66
NYC to Columbus, O.	B&O	383	26,312	42.20	—	—	2.	9.56	—	—	—	2.	16.22	87
B&O to Cherry Run, W. Va.	W. Md.	103	9,194	16.86	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	70
W. Md. to Fulton Jet., Md.)	PRR	75	6,960	9.63	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	75
Total		913	66,971	\$101.13		\$ 48.44		\$ 45.75					\$ 90.17	\$37

Statement Showing for 33 Tons of Grain and Grain Products Moving from Western Origins to Hagerstown, Md., via Various Routes, and 1.34 Cars of Grain Products at 24.6 Tons Per Car Moved Outbound from Hagerstown to Different Destinations in the East, the Comparative Costs for Transportation over the Specified Routes. Tare Weight of Car Taken as 22 Tons. Costs Based on Annual Reports of Carriers to Interstate Commerce Commission for Year 1940.

	Route	Miles	Gross Ton Miles	Cost—Opr. Exprs. Only					Cost—Opr. Exprs., Rents, 5¼% Return and Pass. Defcy.					Total
				Road	Terminal		Interchange	Amount	No.	Terminal		Interchange	Amount	No.
					No.	Amount				No.	Amount			
o Milford, N. J.	PRR	1176	83,248	\$115.22	4.68	\$ 80.87	—	—	—	—	—	—	—	—
o Milford, N. J.	NYC	628	43,897	55.75	1.	15.91	1.	\$ 6.97	—	—	—	1.	\$ 15.18	\$171
wn, O. via Cleveland	P&LE	123	8,524	17.66	—	—	2.	9.30	—	—	—	2.	14.54	42
ville, Pa.	W. Md.	253	19,649	35.94	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	109
Jet., Md.)	PRR	167	15,498	21.45	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	98
Total		1171	87,568	\$130.80		\$ 47.07		\$ 33.21					\$ 63.22	\$421
o Milford, N. J.	Wab.	437	29,410	\$ 35.14	1.	\$ 11.83	1.	\$ 8.75	—	—	—	1.	\$ 16.49	\$104
o	W&LE	184	12,475	27.92	—	—	2.	10.22	—	—	—	2.	16.76	62
o, O.	P&WVa.	112	7,750	25.47	—	—	2.	6.20	—	—	—	2.	13.26	67
ellsville, Pa.	W. Md.	246	18,568	34.05	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	105
Pa.)	PRR	153	14,198	19.65	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	94
Total		1132	82,401	\$142.23		\$ 42.99		\$ 42.11					\$ 80.01	\$435
o Milford, N. J.	B&O	335	23,015	\$ 36.92	1.	\$ 13.13	1.	\$ 4.78	—	—	—	1.	\$ 8.11	\$ 92
i, O.	C&O	441	31,796	32.37	—	—	2.	7.64	—	—	—	2.	14.73	77
V. Va.	W. Md.	236	16,449	30.17	1.	3.42	1.	4.20	—	—	—	1.	8.54	76
stown, Md.)	PRR	237	21,994	30.44	2.68	46.31	—	—	—	—	—	—	—	145
Total		1249	93,254	\$129.90		\$ 62.86		\$ 16.62					\$ 31.38	\$392
-----														
hatham, Pa.	PRR	1018	72,299	\$100.06	4.68	\$ 80.87	—	—	—	—	—	—	—	\$343
hatham, Pa.	Wab.	324	21,805	\$ 26.06	1.	\$ 11.83	1.	\$ 8.75	—	—	—	1.	\$ 16.49	\$ 87
h.	W&LE	184	12,475	27.92	—	—	2.	10.22	—	—	—	2.	16.76	62
t., O.	P&WVa.	112	7,750	25.47	—	—	2.	6.20	—	—	—	2.	13.26	67
ellsville, Pa.	W. Md.	246	18,568	34.05	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	105
Pa.)	PRR	66	6,125	8.48	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	73
Total		932	66,723	\$121.98		\$ 42.99		\$ 42.11					\$ 80.01	\$397
hatham, Pa.	B&O	712	48,914	\$ 78.46	1.	\$ 13.13	1.	\$ 4.78	—	—	—	1.	\$ 8.11	\$163
un, W. Va.	W. Md.	19	1,324	2.43	1.	3.42	1.	4.20	—	—	—	1.	8.54	20
stown, Md.)	PRR	150	13,920	19.27	2.68	46.31	—	—	—	—	—	—	—	124
Total		881	64,158	\$100.16		\$ 62.86		\$ 8.98					\$ 16.65	\$308
hatham, Pa.	PRR	167	11,573	\$ 16.02	1.	\$ 17.28	1.	\$ 5.31	—	—	—	1.	\$ 10.09	\$ 73
olis, Ind.	NYC	185	12,932	16.42	—	—	2.	13.94	—	—	—	2.	30.36	66
s, O.	B&O	383	26,312	42.20	—	—	2.	9.56	—	—	—	2.	16.22	87
un, W. Va.	W. Md.	103	9,194	16.86	2.34	8.00	2.34	9.83	—	—	—	2.34	19.98	70
Jet., Md.)	PRR	75	6,960	9.63	1.34	23.16	1.34	7.11	—	—	—	1.34	13.52	75
Total		913	66,971	\$101.13		\$ 48.44		\$ 45.75					\$ 90.17	\$373



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## RAILROAD BASIC DATA AND MANNER IN WHICH USED—YEAR 1940

	P.R.R.	C. & O.	W. Md.	Wabash	W. & L. E.	P. & W. V.
8. Per Cent. Yard is of Tot. Exps. (5+7)	44.8	36.6	31.3	46.6	36.4	26.2
9. Per Cent. Road is of Tot. Exps. (6+7)	55.2	63.4	68.7	53.4	63.6	73.8
10. Total Freight Operating Expenses	\$ 226,235,109	\$ 61,689,953	\$ 11,383,373	\$ 28,070,048	\$ 10,721,218	\$ 3,027,152
11. Terminal Prop. Frt. Opr. Exps. (10×8)	\$ 101,353,329	\$ 22,578,523	\$ 3,562,996	\$ 13,080,642	\$ 3,902,523	\$ 793,114
12. L.C.L. Tons	3,238,893	478,771	174,180	369,231	54,468	5,881
13. LCL Platform & Clerical Costs (12×13a)	\$ 5,182,229	\$ 531,436	\$ 278,688	\$ 590,770	\$ 87,149	\$ 9,410
13. (a) LCL Plat. & Clerical Cost Per Ton (FCT Mdse. Traffic Report, Exhi 112F, P. 243)	\$ 1.60	\$ 1.11	\$ 1.60	\$ 1.60	\$ 1.60	\$ 1.60
14. Term. Prop. Frt. Opr. Exps.—CL (11-13)	\$ 96,171,100	\$ 22,047,087	\$ 3,284,308	\$ 12,489,872	\$ 3,815,374	\$ 783,704
15. Carload Units (Sch. 541-AR-Excl ICL):						
(a) Originated (Cols. b and d)	2,371,351	1,038,767	144,898	194,967	163,728	55,304
(b) Terminated (Cols. b and f)	3,001,499	755,367	108,646	313,861	119,805	29,123
(c) Received from Connections (f+h)	2,001,932	495,545	299,042	436,703	203,983	80,679
(d) Delvd. to Connections (d+h)	1,371,784	778,945	335,294	317,809	247,906	106,860
(e) Total Carloads (15a+15b+70% (15c+15d))	7,734,451	2,686,277	697,579	1,036,986	599,855	215,704
16. Ratio to Carload Units of Total Originated and Terminated (15÷into(15a+15b))	69.5	66.8	36.3	49.1	47.3	39.1
17. Ratio Carloads Interchanged to Total (100%—Item 16)	30.5	33.2	63.7	51.9	52.7	60.9
18. Terminal Cost Per Carload (14÷15e)×16)200%	\$ 17.28	\$ 10.966	\$ 3.418	\$ 11.83	\$ 6.02	\$ 2.84
19. Interchange Cost per CL (70% 14÷15e×17) 200%	\$ 5.309	\$ 3.815	\$ 4.199	\$ 8.75	\$ 5.11	\$ 3.10
20. Road Prop. Frt. Opr. Exps. (10×9)	\$ 124,881,780	\$ 39,111,430	\$ 7,820,377	\$ 14,989,406	\$ 6,818,695	\$ 2,234,038
21. Gross Ton Miles—Revenue (Thous.)	90,252,213	38,410,402	4,264,321	12,541,820	3,046,212	679,737
22. Road Cost Per 1000 Gross Ton Mi. (20÷21)	\$ 1.384	\$ 1.018	\$ 1.834	\$ 1.195	\$ 2.238	\$ 3.287
23. Investment (Incl. Cash, Matl. & Supplies) Frt. service	\$1,824,803,501	\$ 506,424,092	\$ 161,094,159	\$ 248,661,313	\$ 95,699,390	\$ 56,479,452
24. 5¼% Return on Investment	\$ 104,926,201	\$ 29,119,385	\$ 9,262,915	\$ 14,298,026	\$ 5,502,715	\$ 3,247,568
25. Passenger Deficiency	\$ 57,850,176	\$ 12,145,814	\$ 1,038,764	\$ 4,695,384	\$ 1,038,764	\$ 4,695,384
26. Tot. Frt. Opr. Exps., Rents, 5¼% Return	\$ 371,876,265	\$ 106,998,378	\$ 22,094,563	\$ 48,205,474	\$ 17,572,600	\$ 6,473,031
27. Tot. Frt. Opr. Exps., Rents, 5¼% Ret., Pass. Def.	\$ 429,726,441	\$ 119,144,192	\$ 23,133,327	\$ 52,900,858	\$ 17,572,600	\$ 6,475,416
28. Per Cent. Item 26 of Item 10	1.644	1.734	1.942	1.717	1.639	2.139
29. Per Cent. Item 27 of Item 10	1.900	1.931	2.033	1.885	1.639	2.139
30. Term. Cost Per Car Inc. Ovhd. Ex. Pass. Def. (Item 28 18×28)	\$ 28.41	\$ 19.02	\$ 6.64	\$ 20.31	\$ 9.87	\$ 6.07
31. Term. Cost Per Car Inc. All Ovhd. (18×29)	\$ 32.83	\$ 21.18	\$ 6.95	\$ 22.30	\$ 9.87	\$ 6.07
32. Interchg. Cost Per Car, Inc. Ovhd., Except Pass. Def. (19×28)	\$ 8.73	\$ 6.62	\$ 8.15	\$ 15.02	\$ 8.38	\$ 6.63
33. Interchg. Cost Per Car, Inc. All Ovhd. (19×29)	\$ 10.09	\$ 7.367	\$ 8.54	\$ 16.49	\$ 8.38	\$ 6.63
34. Road Cost Per 1000 GTM Inc. Ovhd., Except Pass. Def. (22×28)	\$ 2.274	\$ 1.765	\$ 3.562	\$ 2.05	\$ 3.67	\$ 7.03
35. Road Cost Per 1000 GTM Inc. All Ovhd. (22×29)	\$ 2.628	\$ 1.966	\$ 3.729	\$ 2.25	\$ 3.67	\$ 7.03

	N. & W.	CCC&STL (NYCRR)	Rdg. Co.
1. Select. Yd. & Sta. Exps. (Yd. Prop. Accts. 202-222, Ex. Depr., 227, 373, 376-391, Yd. Prop. 308)—Frt.	\$ 7,913,038	\$ 51,659,464	\$ 9,295,431
2. Select. Road Exps. (Rd. Prop. 202-222, Ex. Depr., Accts. 392-402; 412-413, Rd. Prop. 308)	\$ 9,000,165	\$ 61,389,751	\$ 12,088,269
3. Adjustment for Train Switching:			
(a) Yd. Exps.—Frt. (Yd. Props. 308, 378-389)	\$ 4,127,145	\$ 28,594,021	\$ 4,848,091
(b) Yard Switching Loco. Miles—Frt.	\$ 2,596,320	\$ 22,857,865	\$ 4,710,966
(c) Exps. Per Loco. Mile (a÷b)	\$ 1.590	\$ 1.251	\$ 1.035
(d) Train Switching Loco. Miles—Frt.	\$ 798,447	\$ 4,816,591	\$ 1,021,964
(e) Train Switching Exps. Adjusted (d×c)	\$ 1,269,530	\$ 6,025,555	\$ 1,057,733
4. Adjust. of Intermediate Classification:			
(a) Yard Exps.—Frt. (Yd. Prop. 202-222, Ex. Depr., 377-389; Yd. Prop. 308)	\$ 5,741,005	\$ 36,418,500	\$ 5,980,186
(b) Carload Units (Sch. 540AR Cols. b+d)+ (b+f)+70% (f+h)+(d+h)+LCL	\$ 2,097,545	\$ 7,218,641	\$ 2,702,513
(c) Expenses Per Carload Unit (a÷b)	\$ 2.737	\$ 5.046	\$ 2.213
(d) .17 Times CL Unit Exp. (17×c)	\$ 465	\$ 858	\$ 376
(e) Average Haul—Revenue Freight	\$ 276.2	\$ 214.7	\$ 89.3
(f) Avg. Haul Bet. Intermediate Yardings	\$ 109.2	\$ 113.8	\$ 91.0
(g) No. intermediate Yardings (e-f)÷f	\$ 1.529	\$ .887	\$ —
(h) Classification Exps. Adj. (b÷2)×d×g	\$ 745,661	\$ 2,746,859	\$ —
5. Adj. Select. Yd. & Sta. Exps.—Frt. (1÷3e)-4h	\$ 8,436,907	\$ 54,937,160	\$ 10,353,164
6. Adj. Select. Road Exps.—Frt. (2-3e)+4h	\$ 18,476,296	\$ 58,111,055	\$ 11,030,536
7. Total Yard & Road Expenses (5+6)	\$ 26,913,203	\$ 113,048,215	\$ 21,383,700
8. Percent. Yard of Total Exps. (5÷7)	31.3	48.6	48.4
9. Percent. Road of Total Exps. (6÷7)	31.3	48.6	48.4

## 15. Carload Units (Sch. 541AR-Ex. LCL):

	N. & W.	CCC&STL (NYC)
(a) Originated (Cols. b and d)	887,258	1,643,260
(b) Terminated (Cols. b and f)	293,132	2,331,313
(c) Rec. From Conns. (Col. f+h)	236,090	2,124,641
(d) Delvd. To Conns. (Col. d+h)	830,216	1,436,588
(e) Total Carloads (15a+15b)+70% 15c+15d	1,926,804	6,467,423
16. Ratio CL Orig. & Term. to Total	61.2	61.5
17. Ratio CL Interchg. to Total (100%—16)	38.8	38.5
18. Term. Cost Per CL (14÷15e)×16)200%	\$ 9.62	\$ 15.91
19. Interchg. Cost Per CL (70% 14÷15e)×17)200%	\$ 6.10	\$ 6.97
20. Road Prop. Frt. Opr. Exps. (10×9)	\$ 34,264,125	\$ 91,352,429
21. Gross Ton Miles—Revenue (Thous.)	29,694,904	71,947,034
22. Road Cost Per 1000 GTM (20÷21)	\$ 1.154	\$ 1.270
23. Investment (Incl. Cash, Matl. & Suppl.)	\$ 477,723,195	\$ 2,101,081,473
24. 5¼% Return on Investment	\$ 27,469,084	\$ 120,812,185
25. Passenger Deficiency	\$ 7,954,513	\$ 54,502,638
26. Tot. Frt. Opr. Exps., Rents, 5¼% Ret.	\$ 90,775,977	\$ 332,487,051
27. Tot. Frt. Opr. Exp., Rts., 5¼% Rt., Pass. D.	\$ 98,730,490	\$ 386,989,689
28. Percent. Item 26 of Item 10	1.82	1.871
29. Percent. Item 27 of Item 10	1.98	2.178
30. Term. Cost Per Car, Incl. Ovhd. Ex. Pass. Def. (18×28)	\$ 17.51	\$ 29.77
31. Term. Cost Per Car, Incl. All Ovhd. (18×29)	\$ 19.05	\$ 34.65
32. Interchg. Cost Per CL, Incl. Ovhd., Except Pass. Def. (19×28)	\$ 11.10	\$ 13.04
33. Interchg. Cost Per CL, Incl. All Ovhd. (19×29)	\$ 12.08	\$ 15.18
34. Road Cost Per 1000 GTM, Incl. Ovhd., except	\$ 2.376	\$ 2.920

## RAILROAD BASIC DATA AND MANNER IN WHICH USED—YEAR 1940

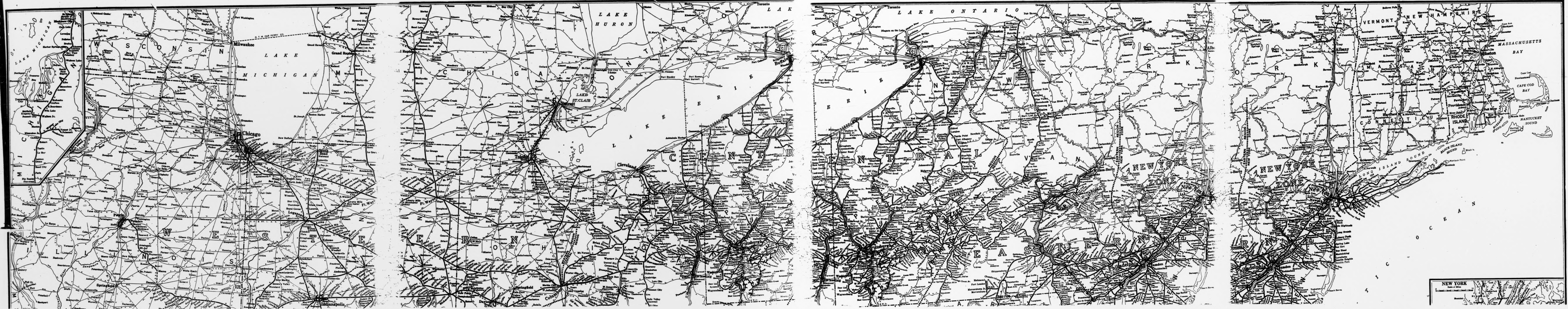
	P.R.R.	C. & O.	W. Md.	Wabash	W. & L. E.	P. & W. Va.	B. & O.
Tot. Exps. (5+7)	44.8	36.6	31.3	46.6	36.4	26.2	38.8
Tot. Exps. (6+7)	55.2	63.4	68.7	53.4	63.6	73.8	61.2
ing Expenses	\$ 226,235,109	\$ 61,689,953	\$ 11,383,373	\$ 28,070,048	\$ 10,721,218	\$ 3,027,152	\$ 102,192,156
Opr. Exps. (10×8)	\$ 101,353,329	\$ 22,578,523	\$ 3,562,996	\$ 13,080,642	\$ 3,902,523	\$ 793,114	\$ 39,650,557
ical Costs (12×13a)	\$ 3,238,893	\$ 478,771	\$ 174,180	\$ 369,231	\$ 54,468	\$ 5,881	\$ 1,106,670
ical Cost Per Ton (FCT Mdse. Traffic Report, Exhi 112F, P. 243)	\$ 5,182,229	\$ 531,436	\$ 278,688	\$ 590,770	\$ 87,149	\$ 9,410	\$ 1,770,672
or Exps.—CL (11-13)	\$ 96,171,100	\$ 22,047,087	\$ 3,284,308	\$ 12,489,872	\$ 3,815,374	\$ 783,704	\$ 37,879,885
541-AR-Excl ICL:							
(a) Originated (Cols. b and d)	2,371,351	1,038,767	144,898	194,967	163,728	55,304	1,213,498
(b) Terminated (Cols. b and f)	3,001,499	755,367	108,646	313,861	119,805	29,123	1,285,246
(c) Received from Connections (f+h)	2,001,932	495,545	299,042	436,703	203,983	80,679	962,407
(d) Delvd. to Connections (d+h)	1,371,784	778,945	335,294	317,809	247,906	106,860	890,659
(e) Total Carloads (15a+15b+70% (15c+15d))	7,734,451	2,686,277	697,579	1,036,986	599,855	215,704	3,795,890
15a+15b+70% (15c+15d))	69.5	66.8	36.3	49.1	47.3	39.1	65.8
its of Total Originated and Terminated (15÷into(15a+15b))	30.5	33.2	63.7	51.9	52.7	60.9	34.9
interchanged to Total (100%—Item 16)	17.28	10.966	3.418	11.83	6.02	2.84	13.13
arload (14÷15e)×16)200%	\$ 5.309	\$ 3.815	\$ 4.199	\$ 8.75	\$ 5.11	\$ 3.10	\$ 4.78
r CL (70% 14÷15e×17) 200%	\$ 124,881,780	\$ 39,111,430	\$ 7,820,377	\$ 14,989,406	\$ 6,818,695	\$ 2,234,038	\$ 62,541,599
Exps. (10×9)	\$ 90,252,213	\$ 38,410,402	\$ 4,264,321	\$ 12,541,820	\$ 3,046,212	\$ 679,737	\$ 39,037,481
evenue (Thous.)	\$ 1.384	\$ 1.018	\$ 1.834	\$ 1.195	\$ 2.238	\$ 3.287	\$ 1.604
Gross Ton Mi. (20÷21)	\$1,824,803,501	\$ 506,424,092	\$ 161,094,159	\$ 248,661,313	\$ 95,699,390	\$ 56,479,452	\$ 790,376,979
ash, Matl. & Supplies) Frt. service	\$ 104,926,201	\$ 29,119,385	\$ 9,262,915	\$ 14,298,026	\$ 5,502,715	\$ 3,247,568	\$ 45,446,676
vestment	\$ 57,850,176	\$ 12,145,814	\$ 1,038,764	\$ 4,695,384	\$ 1,038,764	\$ 4,695,384	\$ 13,427,191
Rents, 5¼% Return	\$ 371,876,265	\$ 106,998,378	\$ 22,094,563	\$ 48,205,474	\$ 17,572,600	\$ 6,473,031	\$ 159,925,217
Rents, 5¼% Ret., Pass. Def.	\$ 429,726,441	\$ 119,144,192	\$ 23,133,327	\$ 52,900,858	\$ 17,572,600	\$ 6,475,416	\$ 173,352,408
Item 10	1.644	1.734	1.942	1.717	1.639	2.139	1.696
Item 10	1.900	1.931	2.033	1.885	1.639	2.139	1.696
Inc. Ovhd. Ex. Pass. Def. (Item 28 18×28)	\$ 28.41	\$ 19.02	\$ 6.64	\$ 20.31	\$ 9.87	\$ 6.07	\$ 20.54
Inc. All Ovhd. (18×29)	\$ 32.83	\$ 21.18	\$ 6.95	\$ 22.30	\$ 9.87	\$ 6.07	\$ 22.27
ar, Inc. Ovhd., Except Pass. Def. (19×28)	\$ 8.73	\$ 6.62	\$ 8.15	\$ 15.02	\$ 8.38	\$ 6.63	\$ 7.40
ar, Inc. All Ovhd. (19×29)	\$ 10.09	\$ 7.367	\$ 8.54	\$ 16.49	\$ 8.38	\$ 6.63	\$ 8.11
GTM Inc. Ovhd., Except Pass. Def. (22×28)	\$ 2.274	\$ 1.765	\$ 3.562	\$ 2.05	\$ 3.67	\$ 7.03	\$ 2.51
GTM Inc. All Ovhd. (22×29)	\$ 2.628	\$ 1.966	\$ 3.729	\$ 2.25	\$ 3.67	\$ 7.03	\$ 2.72

	N. & W.	CCC&STL (NYCRR)	Rdg. Co.
ps. (Yd. Prop. Accts. 202-222, Ex. Depr., 227, 373, 376-391, Yd. Prop. 308)—Frt.	\$ 7,913,038	\$ 51,659,464	\$ 9,295,431
(Rd. Prop. 202-222, Ex. Depr., Accts. 392-402; 412-413, Rd. Prop. 308)	\$ 9,000,165	\$ 61,389,751	\$ 12,088,269
Switching:			
Yd. Props. 308, 378-389)	\$ 4,127,145	\$ 28,594,021	\$ 4,848,091
Loco. Miles—Frt.	\$ 2,596,320	\$ 22,857,865	\$ 4,710,966
Mile (a÷b)	\$ 1.590	\$ 1.251	\$ 1.035
Loco. Miles—Frt.	\$ 798,447	\$ 4,816,591	\$ 1,021,964
Exps. Adjusted (d×c)	\$ 1,269,530	\$ 6,025,555	\$ 1,057,733
ate Classification:			
(Yd. Prop. 202-222, Ex. Depr., 377-389; Yd. Prop. 308)	\$ 5,741,005	\$ 36,418,500	\$ 5,980,186
Sch. 540AR Cols. b+d)+ (b+f)+70% (f+h)+(d+h)+LCL	\$ 2,097,545	\$ 7,218,641	\$ 2,702,513
road Unit (a÷b)	\$ 2.737	\$ 5.046	\$ 2.213
it Exp. (17×c)	\$ 465	\$ 858	\$ 376
Revenue Freight	\$ 276.2	\$ 214.7	\$ 89.3
Intermediate Yardings	\$ 109.2	\$ 113.8	\$ 91.0
Yardings (e-f)÷f	\$ 1.529	\$ .887	\$ —
ps. Adj. (b÷2)×d×g	\$ 745,661	\$ 2,746,859	\$ —
a. Exps.—Frt. (1÷3e)-4h	\$ 8,436,907	\$ 54,937,160	\$ 10,353,164
s—Frt. (2-3e)+4h	\$ 18,476,296	\$ 58,111,055	\$ 11,030,536
Expenses (5+6)	\$ 26,913,203	\$ 113,048,215	\$ 21,383,700
al Exps. (5÷7)	31.3	48.6	48.4
al Exps. (6÷7)	31.3	48.6	48.4

## 15. Carload Units (Sch. 541AR-Ex. LCL):

	N. & W.	CCC&STL (NYC)	Rdg. Co.
(a) Originated (Cols. b and d)	887,258	1,643,260	633,562
(b) Terminated (Cols. b and f)	293,132	2,331,313	724,813
(c) Rec. From Conns. (Col. f+h)	236,090	2,124,641	808,384
(d) Delvd. To Conns. (Col. d+h)	830,216	1,436,588	717,133
(e) Total Carloads (15a+15b)+70% 15c+15d	1,926,804	6,467,423	2,426,678
16. Ratio CL Orig. & Term. to Total	61.2	61.5	56.0







(e) Total Carloads (15a+15b+70% (15c+15d))	7,734,451	2,686,277	697,579	1,036,986	599,855	215,704
16. Ratio to Carload Units of Total Originated and Terminated (15÷into(15a+15b))	69.5	66.8	36.3	49.1	47.3	39.1
17. Ratio Carloads Interchanged to Total (100%—Item 16)	30.5	33.2	63.7	51.9	52.7	60.9
18. Terminal Cost Per Carload (14÷15e)×16)200%	\$ 17.28	\$ 10.966	\$ 3.418	\$ 11.83	\$ 6.02	\$ 2.84
19. Interchange Cost per CL (70% 14÷15e×17) 200%	\$ 5.309	\$ 3.815	\$ 4.199	\$ 8.75	\$ 5.11	\$ 3.10
20. Road Prop. Frt. Opr. Exps. (10×9)	\$ 124,881,780	\$ 39,111,430	\$ 7,820,377	\$ 14,989,406	\$ 6,818,695	\$ 2,234,038
21. Gross Ton Miles—Revenue (Thous.)	\$ 90,252,213	\$ 38,410,402	\$ 4,264,321	\$ 12,541,820	\$ 3,046,212	\$ 679,737
22. Road Cost Per 1000 Gross Ton Mi. (20÷21)	\$ 1.384	\$ 1.018	\$ 1.834	\$ 1.195	\$ 2.238	\$ 3.287
23. Investment (Incl. Cash, Matl. & Supplies) Frt. service	\$1,824,803,501	\$ 506,424,092	\$ 161,094,159	\$ 248,661,313	\$ 95,699,390	\$ 56,479,452
24. 5¼% Return on Investment	\$ 104,926,201	\$ 29,119,385	\$ 9,262,915	\$ 14,298,026	\$ 5,502,715	\$ 3,247,568
25. Passenger Deficiency	\$ 57,850,176	\$ 12,145,814	\$ 1,038,764	\$ 4,695,384	\$ —	\$ 2,385
26. Tot. Frt. Opr. Exps., Rents, 5¼% Return	\$ 371,876,265	\$ 106,998,378	\$ 22,094,563	\$ 48,205,474	\$ 17,572,600	\$ 6,473,031
27. Tot. Frt. Opr. Exps., Rents, 5¼% Pass. Def.	\$ 429,726,441	\$ 119,144,192	\$ 23,133,327	\$ 52,900,858	\$ 17,572,600	\$ 6,475,416
28. Per Cent. Item 26 of Item 10	1.644	1.734	1.942	1.717	1.639	2.138
29. Per Cent. Item 27 of Item 10	1.900	1.931	2.033	1.885	1.639	2.139
30. Term. Cost Per Car Inc. Ovhd. Ex. Pass. Def. (Item 28 18×28)	\$ 28.41	\$ 19.02	\$ 6.64	\$ 20.31	\$ 9.87	\$ 6.07
31. Term. Cost Per Car Inc. All Ovhd. (18×29)	\$ 32.83	\$ 21.18	\$ 6.95	\$ 22.30	\$ 9.87	\$ 6.07
32. Interchg. Cost Per Car, Inc. Ovhd., Except Pass. Def. (19×28)	\$ 8.73	\$ 6.62	\$ 8.15	\$ 15.02	\$ 8.38	\$ 6.63
33. Interchg. Cost Per Car, Inc. All Ovhd. (19×29)	\$ 10.09	\$ 7.367	\$ 8.54	\$ 16.49	\$ 8.38	\$ 6.63
34. Road Cost Per 1000 GTM Inc. Ovhd., Except Pass. Def. (22×28)	\$ 2.274	\$ 1.765	\$ 3.562	\$ 2.05	\$ 3.67	\$ 7.03
35. Road Cost Per 1000 GTM Inc. All Ovhd. (22×29)	\$ 2.628	\$ 1.966	\$ 3.729	\$ 2.25	\$ 3.67	\$ 7.03

	N. & W.	CCC&STL (NYCRR)	Rdg. Co.
1. Select. Yd. & Sta. Exps. (Yd. Prop. Accts. 202-222, Ex. Depr., 227, 373, 376-391, Yd. Prop. 308)—Frt.	\$ 7,913,038	\$ 51,659,464	\$ 9,295,431
2. Select. Road Exps. (Rd. Prop. 202-222, Ex. Depr., Accts. 392-402; 412-413, Rd. Prop. 308)	\$ 9,000,165	\$ 61,389,751	\$ 12,088,269
3. Adjustment for Train Switching:			
(a) Yd. Exps.—Frt. (Yd. Props. 308, 378-389)	\$ 4,127,145	\$ 28,594,021	\$ 4,848,091
(b) Yard Switching Loco. Miles—Frt.	2,596,320	22,857,865	4,710,966
(c) Exps. Per Loco. Mile (a÷b)	\$ 1.590	\$ 1.251	\$ 1.035
(d) Train Switching Loco. Miles—Frt.	798,447	4,816,591	1,021,964
(e) Train Switching Exps. Adjusted (d×c)	\$ 1,269,530	\$ 6,025,555	\$ 1,057,733
4. Adjust. of Intermediate Classification:			
(a) Yard Exps.—Frt. (Yd. Prop. 202-222, Ex. Depr., 377-389; Yd. Prop. 308)	\$ 5,741,005	\$ 36,418,500	\$ 5,980,186
(b) Carload Units (Sch. 540AR Cols. b+d)+(b+f)+70%(f+h)+(d+h)+LCL	2,097,545	7,218,641	2,702,513
(c) Expenses Per Carload Unit (a÷b)	\$ 2.737	\$ 5.046	\$ 2.213
(d) .17 Times CL Unit Exp. (.17×c)	\$ .465	\$ .858	\$ .376
(e) Average Haul—Revenue Freight	276.2	214.7	89.3
(f) Avg. Haul Bet. Intermediate Yardings	109.2	113.8	91.0
(g) No. intermediate Yardings (e÷f)÷f	1.529	.887	—
(h) Classification Exps. Adj. (b÷2)×d×g	\$ 745,661	\$ 2,746,859	\$ —
5. Adj. Select. Yd. & Sta. Exps.—Frt. (1÷3e)÷4h	\$ 8,436,907	\$ 54,937,160	\$ 10,353,164
6. Adj. Selec. Road Exps.—Frt. (2÷3e)÷4h	\$ 18,476,296	\$ 58,111,055	\$ 11,030,536
7. Total Yard & Road Expenses (5+6)	\$ 26,913,203	\$ 113,048,215	\$ 21,383,700
8. Percent. Yard of Total Exps. (5÷7)	31.3	48.6	48.4
9. Percent. Road of Total Exps. (6÷7)	68.7	51.4	51.6
10. Tot. Frt. Opr. Exps.	\$ 49,875,000	\$ 177,728,443	\$ 34,796,516
11. Terminal Prop. Frt. Opr. Exps. (10×8)	\$ 15,610,875	\$ 86,376,023	\$ 16,841,514
12. L.C.L. Tons	416,190	1,716,080	678,627
13. LCL Platform & Clerical Costs (12×13a)	\$ 461,971	\$ 2,745,728	\$ 1,085,803
14. Term. Prop. Frt. Opr. Exps.—CL (11—13)	\$ 15,148,904	\$ 83,630,295	\$ 15,755,711
13(a). ICL Plat. & Clerical Cost Per Ton	\$ 1.11	\$ 1.60	\$ 1.60

#### Baltimore & Ohio

	Total	Revenue	Non-Revenue
Loaded Freight Car Miles	591,712,966	564,050,591	27,662,375
Empty Freight Car Miles	371,363,953	350,617,172	20,746,781
Total Freight Car Miles	963,076,919	914,667,763	48,409,156
Per Cent.	100.0	95.0	5.0
Caboose Car Miles	19,011,148	18,060,591	950,557
Total Car Miles	982,088,067	932,728,354	49,359,713
Revenue Tons Carried	86,048,712		
Net Ton Miles (Thous.)	18,674,619	17,568,124	1,106,495
Tare Ton Miles (Thous.)	22,314,156	21,198,448	1,115,708
Caboose Ton Miles—15 Tons (Thous.)	285,167	270,909	14,258
Total Gross Ton Miles (Excl. Locos. and Tenders) (Thous.)	41,273,942	29,037,481	2,236,461
Average Haul		204.2	

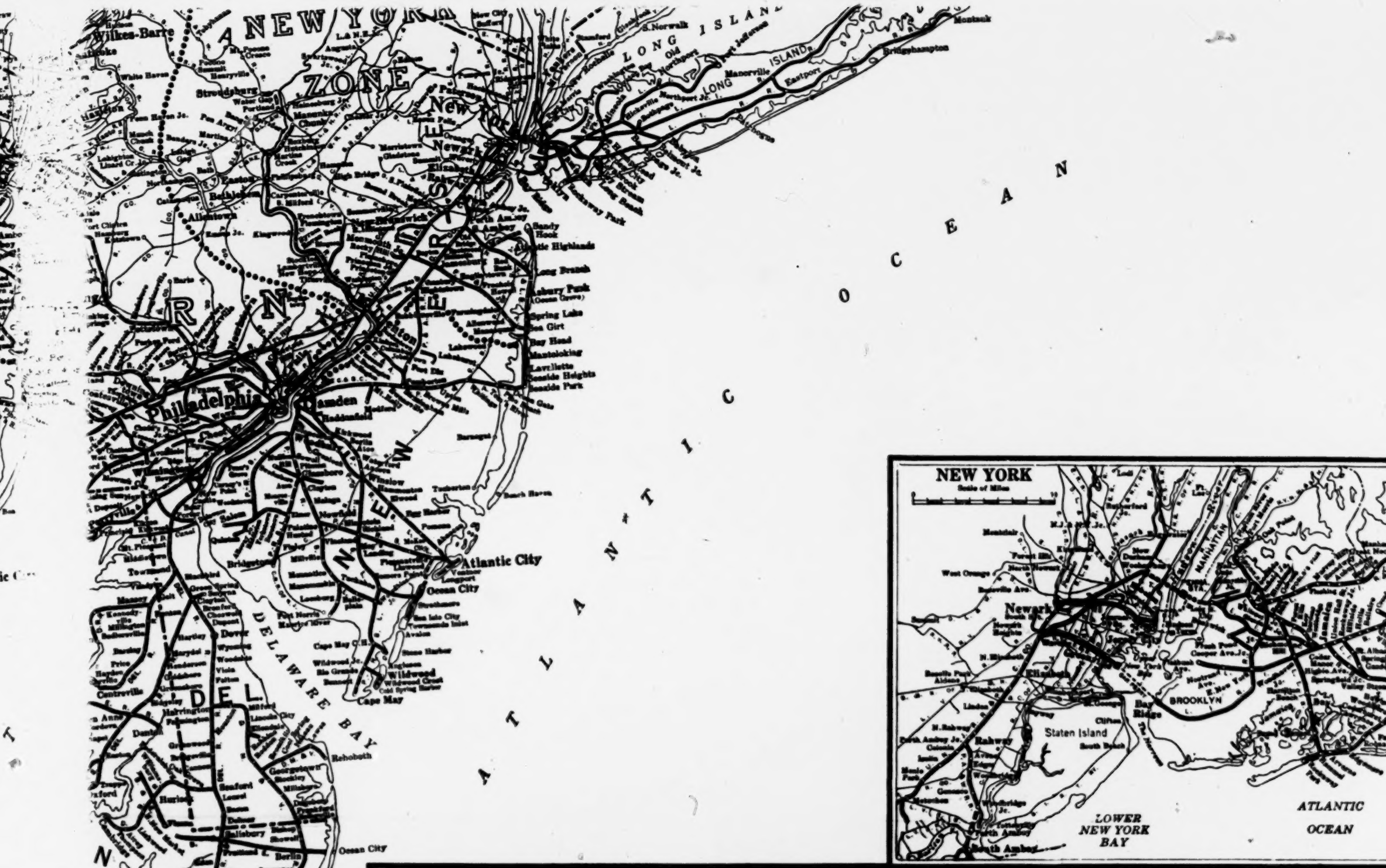
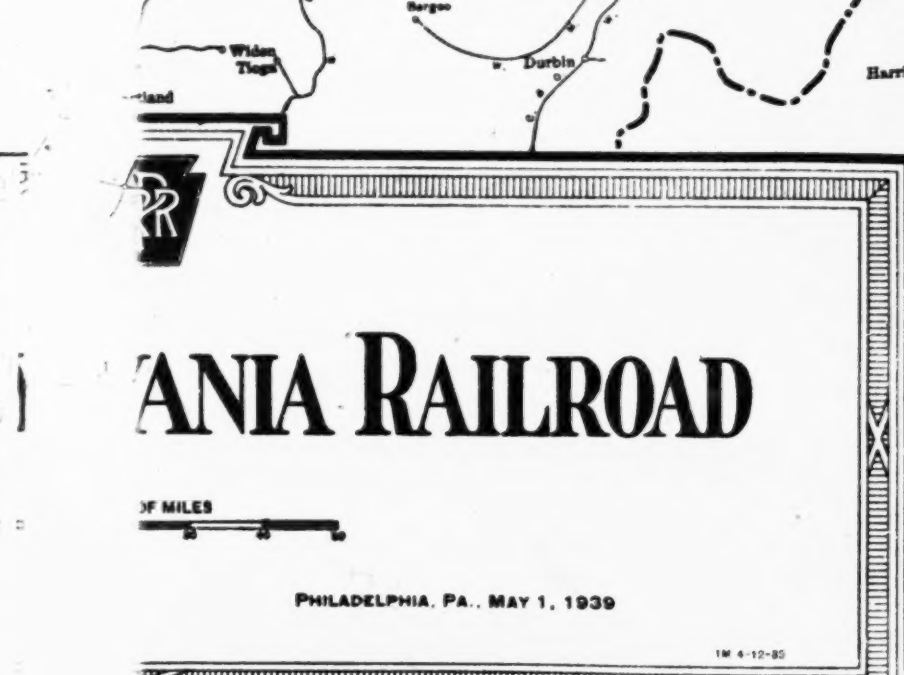
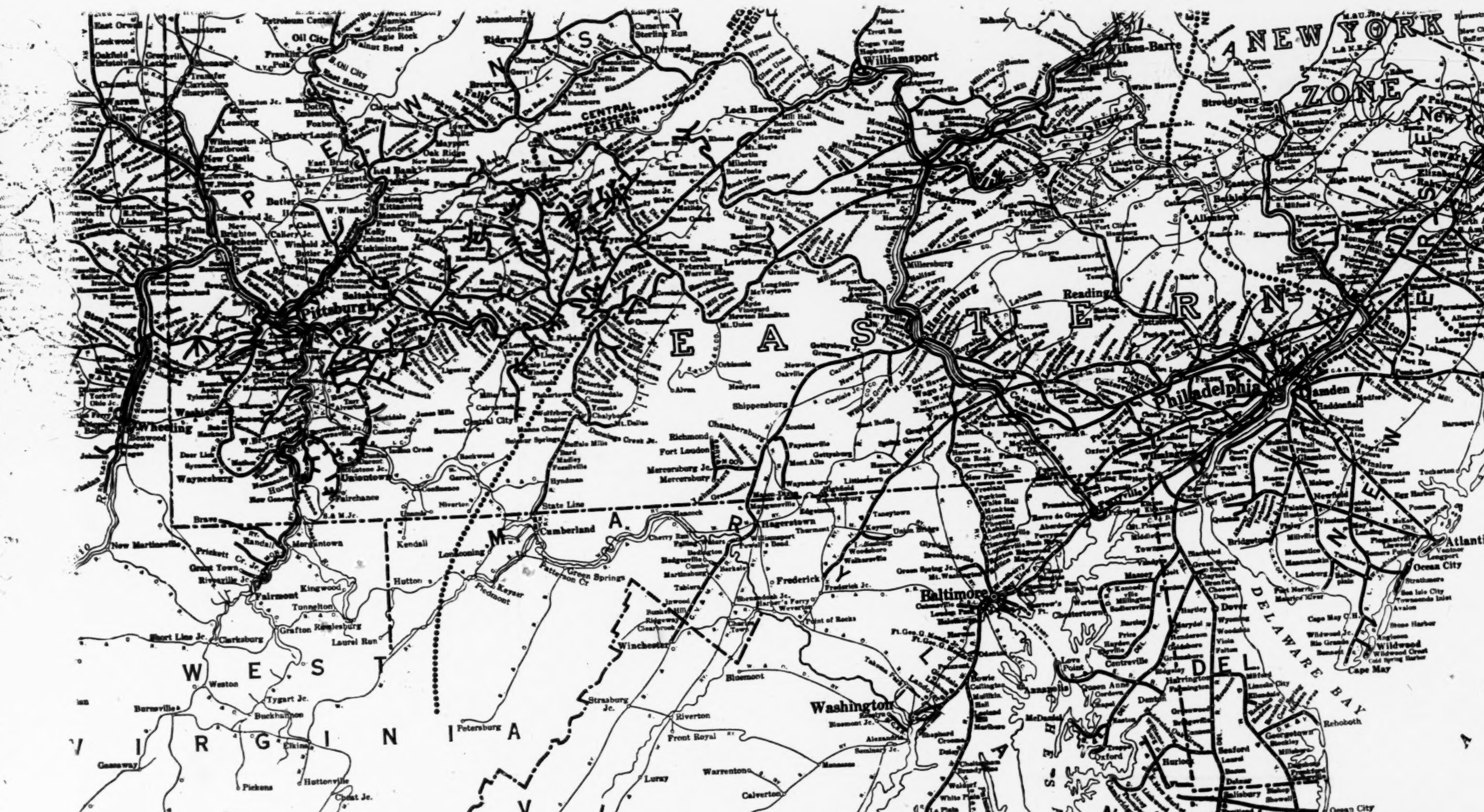
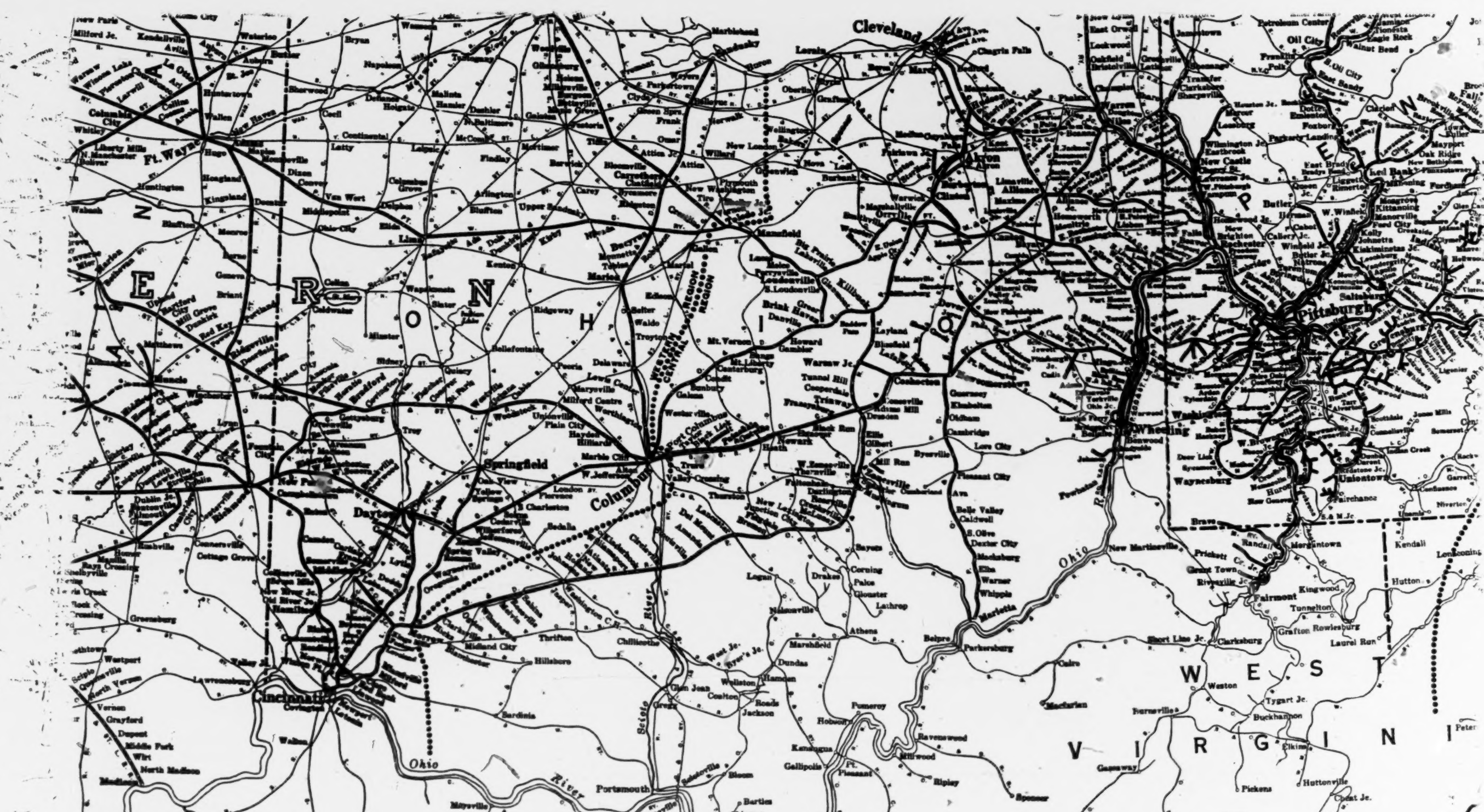
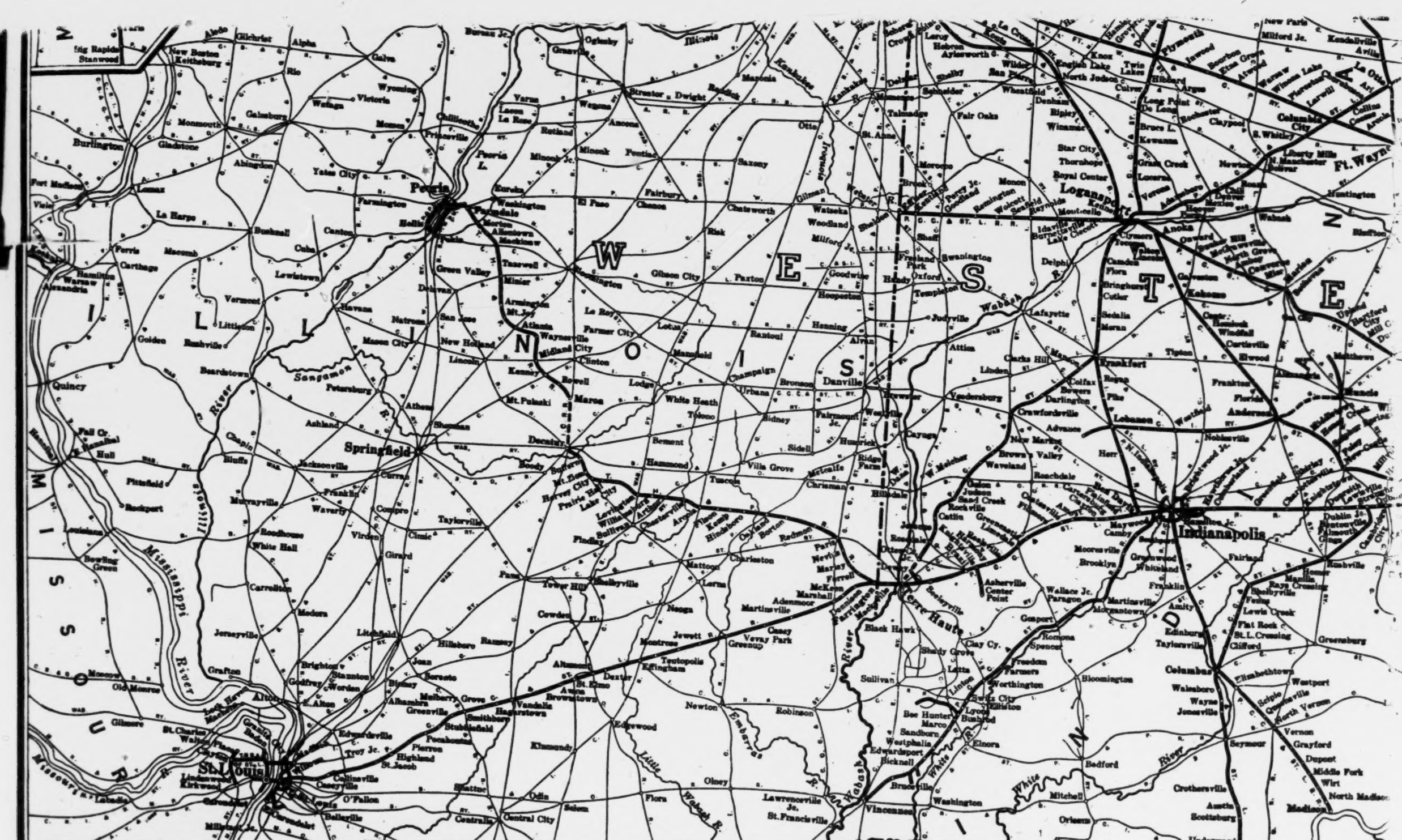
Delvd. to Connections (d+h)	1,371,784	778,945	335,294	317,809	247,906	106,860	890,659
Total Carloads (15a+15b+70% (15c+15d))	7,734,451	2,686,277	697,579	1,036,986	599,855	215,704	3,795,890
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(c) Expenses Per Carload Unit (a÷b)	\$ 2.737	\$ 5.046	\$ 2.213
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5. Adj. Select. Yd. & Sta. Exps.—Frt. (1÷3e)÷4h	\$ 8,436,907	\$ 54,937,160	\$ 10,353,164
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12. L.C.L. Tons	416,190	1,716,080	678,627
13. LCL Platform & Clerical Costs (12×13a)	\$ 461,971	\$ 2,745,728	\$ 1,085,803
14. Term. Prop. Frt. Opr. Exps.—CL (11—13)	\$ 15,148,904	\$ 83,630,295	\$ 15,755,711
13(a). ICL Plat. & Clerical Cost Per Ton	\$ 1.11	\$ 1.60	\$ 1.60

#### Baltimore & Ohio

	Total	Revenue	Non-Revenue
Loaded Freight Car Miles	591,712,966	564,050,591	27,662,375
Empty Freight Car Miles	371,363,953	350,617,172	20,746,781
Total Freight Car Miles	963,076,919	914,667,763	48,409,156
Per Cent.	100.0	95.0	5.0
Caboose Car Miles	19,011,148	18,060,591	950,557
Total Car Miles	982,088,067	932,728,354	49,359,713
Revenue Tons Carried	86,048,712		
Net Ton Miles (Thous.)	18,674,619	17,568,124	1,106,495
Tare Ton Miles (Thous.)	22,314,156	21,198,448	1,115,708
Caboose Ton Miles—15 Tons (Thous.)	285,167	270,909	14,258
Total Gross Ton Miles (Excl. Locos. and Tenders) (Thous.)	41,273,942	29,037,481	2,236,461
Average Haul		204.2	











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**SUPREME COURT OF THE UNITED**

Office - Supreme Court, U. S.

**STATES**

**OCTOBER TERM, 1944**

JUN 21 1944

CHARLES ELMORE DROPLEY  
CLERK

**No. 182**

**THE PENNSYLVANIA RAILROAD COMPANY, THE  
ATCHISON, TOPEKA AND SANTE FE RAILWAY  
COMPANY, THE BALTIMORE AND OHIO RAIL-  
ROAD COMPANY, ET AL.,**

*vs.*

*Appellants,*

**THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION AND D. A. STICKELL  
& SONS, INC.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND.**

**STATEMENT AS TO JURISDICTION.**

✓ | **WM. PEPPER CONSTABLE,  
FRANCIS R. CROSE,  
JOSEPH F. ESHELMAN,**  
*Counsel for Appellants.*

**H. C. BARRON,  
CHARLES CLARK,  
A. B. ENOCH,  
P. F. GAULT,  
THOMAS P. HEALY,  
H. H. LARIMORE,  
A. H. LOSSOW,  
W. A. NORTHCUTT,  
L. H. STRASSER,  
CARSON L. TAYLOR,**  
*Of Counsel.*



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### SUBJECT INDEX.

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Section 41(28), as amended

Section 44, as amended

Section 47

Section 47a, as amended

Section 345, as amended

United States Code, Title 49:

Section 17(9)



**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND**

**Civil No. 2091.**

THE PENNSYLVANIA RAILROAD COMPANY; THE ATCHISON,  
TOPEKA AND SANTA FE RAILWAY COMPANY; THE BALTIMORE  
AND OHIO RAILROAD COMPANY; CHARLES M. THOMSON, AS  
TRUSTEE OF THE PROPERTY OF THE CHICAGO AND NORTHWESTERN RAILWAY  
COMPANY, A CORPORATION; CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY (HENRY A. SCANDRETT, WAL-  
TER J. CUMMINGS AND GEORGE I. HAIGHT, TRUSTEES); JOSEPH  
B. FLEMING AND AARON COLNIX, TRUSTEES OF THE CHICAGO, ROCK  
ISLAND AND PACIFIC RAILWAY COMPANY; LOUISVILLE AND NASH-  
VILLE RAILROAD COMPANY; G. W. WEBSTER AND JOSEPH CHAP-  
MAN, TRUSTEES OF MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAIL-  
WAY COMPANY; GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC RAIL-  
ROAD COMPANY, DEBTOR; THE NEW YORK CENTRAL RAILROAD  
COMPANY; THE PITTSBURGH AND LAKE ERIE RAILROAD  
COMPANY; SOUTHERN RAILWAY COMPANY; WABASH RAIL-  
ROAD COMPANY,

*Petitioners,*

*against*

**UNITED STATES OF AMERICA,**

*Defendant,*

**AND**

**INTERSTATE COMMERCE COMMISSION, D. A. STICKELL & SONS,  
INC.,**

*Interveners-Defendants.*

**JURISDICTIONAL STATEMENT BY PETITIONERS  
UNDER RULE 12 OF THE REVISED RULES OF  
THE SUPREME COURT OF THE UNITED STATES.**

The petitioners-appellants respectfully present the fol-  
lowing statement disclosing the basis upon which it is con-  
tended that the Supreme Court of the United States has  
jurisdiction upon appeal to review the final judgment or  
decree in the above-entitled cause to be reviewed.

### **A. Statutory Provisions.**

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 49, Section 17 (9) (Act of September 18, 1940, c. 722, Sec. 12, 54 Stat. 916).

U. S. C. Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1914, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

### **B. The Statute of a State or the Statute or Treaty of the United States, the Validity of Which Is Involved.**

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved, except that the interpretation of clause (b) of Section 15 (4) of the Interstate Commerce Act, 49 U. S. C. Sec. 15 (4), as amended by the Transportation Act of 1940 (Act of September 18, 1940, c. 722, sec. 10 (b), 54 Stat. 911-912), upon which the order of the Interstate Commerce Commission here involved depends, and which interpretation and order the

District Court upheld, if sustained by the Supreme Court would appear to amount to the implied repeal of the short-hauling limitation contained in Section 15 (4) upon the Commission's power to prescribe new through routes which short-haul a participating railroad without its consent. Said limitation as contained in Section 15 (4), including clause (b), is as follows:

"(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic."

**C. Date of the Judgment or Decree Sought to Be Reviewed and the Date Upon Which the Application for Appeal Was Presented.**

The decree sought to be reviewed was entered on March 22, 1944. The petition for appeal was presented and allowed on May 15, 1944, together with the assignment of errors.

#### **D. Nature of Case and of Rulings Below.**

This is an appeal from a final decree of the United States District Court for the District of Maryland, entered March 22, 1944, dismissing the complaint of petitioners to annul, set aside, and enjoin the order of the Interstate Commerce Commission, Division 2, dated March 18, 1943, in its Docket No. 28647, *D. A. Stickell & Sons, Inc. v. The Alton Railroad Company, et al.*, 255 I. C. C. 333, wherein the Commission, Division 2, ordered the defendants therein, including the railroads petitioners herein, according as they participate in the transportation, to establish, and to maintain and apply to the transportation of grain, grain products, and grain by-products from certain points in Ohio, Indiana, and Illinois, and from certain grain market points in Missouri and Illinois when originating beyond those market points, to destinations on the Pennsylvania Railroad east of York, Pa., and Fulton Junction, Md., and between New York, N. Y., and Cape Charles, Va., certain joint rates over certain new through routes via Hagerstown, Md., prescribed therein, which through routes short-haul one or more of the participating railroads petitioners herein without their consent.

On March 2, 1944, the District Court rendered its decision in which it concluded that the exception contained in clause (b) to the restriction imposed by Section 15 (4) of the Interstate Commerce Act upon the Commission's power to order the establishment of new through routes which short-haul a participating railroad without its consent, must be interpreted to mean "adequate, and more efficient or more economic, transportation" from the shipper's as well as from the carrier's standpoint, and that the Commission has authority thereunder to consider and weigh the relative importance of all factors affecting both shipper and the carrier and to order the establishment of such



new through routes if it finds the considerations in favor of the carriers to be subordinate to the considerations which favor the shipper, and without any findings by it that the existing through routes do not provide adequate transportation between the termini thereof, and that the proposed through routes will be more efficient or more economic from the standpoint of the railroads performing the transportation.

In said decision, the District Court further concluded and held as follows:

"We conclude, for the reasons set forth, that the Commission has (1) correctly interpreted clause (b) of Section 15 (4) of the Transportation Act of 1940; (2) has applied it in the present case in a manner supported by substantial evidence; and (3) that such application violates no Constitutional rights of the petitioning carriers. Therefore, the petition must be dismissed.

"In view of the nature of this case, the Interstate Commerce Commission having made findings of fact, and this Court finding substantial evidence to support the same, it is assumed that no further or other statement of the ultimate or evidentiary facts is required under Rule 52 of the Federal Rules of Civil Procedure beyond those stated in the opinion; and also that the conclusions of law herein need not be separately stated."

The District Court entered a final decree, dated March 22, 1944, that the Commission's order was within its statutory authority and was made upon substantial evidence and in accordance with applicable law and is in all respects valid and dismissing petitioners' complaint for want of equity.

The petitioners appeal from the said decree of the Court below.

D. A. Stickell & Sons, Inc., herein termed complainant, is engaged in the milling and mixing of grain, grain products, and grain by-products, and in the manufacture of mixed livestock and poultry feeds, at Hagerstown, Md. Its complaint filed with the Commission, Docket No. 28647, sought an order under Section 15 of the Interstate Commerce Act, herein termed the Act, requiring the defendant railroads to join in the establishment of certain additional through routes on grain, grain products, and grain by-products, herein collectively termed grain, originating at stations in Ohio, Indiana, Illinois, and certain other states, and destined to stations on the Pennsylvania Railroad east of York, Pa., and Fulton Junction (Baltimore) Md., and between New York, N. Y., and Cape Charles, Va., inclusive, and particularly points south of Wilmington, Del., on the eastern shore of Delaware, Maryland, and Virginia, the so-called Delmarva Peninsula. Such grain moves to this eastern destination territory on joint rates which apply over direct routes from stations in Ohio, Indiana, and Illinois on grain originating at such stations and from the market points of Chicago, East St. Louis, and Cairo, Ill., and St. Louis, Mo., on grain originating beyond. To the eastern destinations on the Pennsylvania through routes were and are already in existence on all the traffic involved and these employ the lines of the Pennsylvania as a participating and destination carrier from points of origin, market points, or from junctions west of Pittsburgh, Pa. Of these existing routes the direct routes operate through Enola Yard (near Harrisburg) Pa., but do not pass through Hagerstown. The Pennsylvania's route via Hagerstown, on which complainant receives its inbound materials, mixes them in transit, and reships them to eastern destinations on the Pennsylvania, involve a haul from Enola Yard to Hagerstown and return, a round-trip dis-

tance of 149 miles, at a charge of 4.5 cents per cwt. in addition to the joint rate applicable over the direct routes.

The objective of the complainant before the Commission was to secure the establishment of the joint rates, which were applicable over the direct routes, over new through routes from and to the origins and destinations indicated which should pass through Hagerstown, in order that complainant might conduct its mixing-in-transit operations thereon without incurring a back-haul charge. For this purpose it asked the prescription of through routes which should employ the lines of the Western Maryland Railway as an intermediate carrier between Connellsville, Pa., and York and Fulton Junction. As compared with their participation in the existing routes, the proposed through routes would reduce the hauls of one or more of the defendant railroads, petitioners herein, particularly the Pennsylvania. None of such defendants consented to being so short-hauled.

The Commission concluded that the through routes sought by the complainant were necessary and desirable in the public interest,<sup>1</sup> but, in view of the limitation of Section 15 (4) upon its power to prescribe through routes without the consent of participating railroads which would be short-hauled thereby, stated that "The question of whether the Commission is precluded from prescribing

<sup>1</sup> The general grant of power to the Commission to prescribe through routes is contained in Section 15(3) of the Interstate Commerce Act, 49 U. S. C. 15 (3), as amended by the Transportation Act of 1940 (Act of September 18, 1940, c. 722, sec. 10 (b), 54 Stat. 911), the pertinent portion of which is as follows:

"(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, . . . ."

the routes sought depends on whether those routes are needed in order to provide adequate and more efficient or adequate and more economic transportation." (255 I. C. C. 338-339).

In its report (255 I. C. C. 340) the Commission found:

"Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers' standpoint."

The Commission further found (255 I. C. C. 339) that the direct route of the Pennsylvania from point of origin to point of destination was in each instance shorter than via either of the proposed routes, that the Pennsylvania's direct route is not unreasonably long, and that prescription of either of the proposed routes would short-haul the Pennsylvania.

Concerning the adequacy, efficiency, and economy of the present routes of the Pennsylvania, the record showed and the Commission found (255 I. C. C. 340):

"The Pennsylvania \* \* \* maintains scheduled fast trains that operate frequently over direct routes, that do not go through Hagerstown, from the rate-break points and origins on its line and from its junctions with other carriers in central territory to the destinations here considered. Its main routes from the west are via Pittsburgh and its Enola yard, which is across the Susquehanna River from Harrisburg. Traffic moving north, south, and east from Harrisburg is classified at that yard. An average of 65 scheduled trains and in addition thereto extra trains, and local trains move into and out of that yard each day. Grain handled by the Pennsylvania moving to and from Hagerstown moves through that yard. Three scheduled trains



operate each way daily between Enola yard and Hagerstown, and additional sections and extra trains are used when needed. There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations."

The Commission made no finding that the existing routes from origin to destination, either direct or via Hagerstown, do not provide adequate transportation. The Commission made no finding that the through routes prescribed would be more efficient or more economic than the existing through routes from the standpoint of the performance of the transportation by the participating railroads, but found (255 I. C. C. 343-344) that the present route of the Pennsylvania via Hagerstown is not as adequate and efficient as the routes sought, so far as the shipper is concerned, and that the proposed through routes would be more economical to the shipper.

Predicated upon these findings the Commission made its ultimate finding (255 I. C. C. 344) that "the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

The Commission, Division 2, thereupon entered its above described order of March 18, 1943, here complained of. This

order required the defendants therein named, including petitioners herein, to comply therewith by filing appropriate tariffs with the Commission effective June 28, 1943, upon not less than 30 days' notice. Thereafter the defendant railroads (other than Western Maryland Railway Company) filed with the Commission their petition for reargument and reconsideration of the said report and order of the Commission, Division 2, of March 18, 1943, and for the stay or postponement of said order pursuant to the provisions of 49 U. S. C. Sec. 17 (8), 54 Stat. 916. By order of October 4, 1943, the Commission denied, without report, the said petition for reargument and reconsideration, but by interim and subsequent orders, issued from time to time, modified the said order of March 18, 1943, so as to become effective on April 17, 1944, upon 15-days' notice.

The petitioners on November 4, 1943, filed in the United States District Court for the District of Maryland their petition for an interlocutory and final injunction enjoining, setting aside, annulling, and suspending the said order of the Commission.

Thereafter, on March 22, 1944, the District Court made and entered its said final decree determining, ordering, and decreeing that the said order of the Commission was within its statutory authority and was made upon substantial evidence and in accordance with applicable law and is in all respects valid and that the complaint is dismissed for want of equity at petitioners' costs.

Upon application of petitioners for a stay of the Commission's said order of March 18, 1943, pending the perfection and determination of an appeal to the Supreme Court of the United States from the final decree of the District Court, and upon the petitioners' undertaking "to waive, effective April 17, 1944, and pending disposition of appeal, the back-haul charge of The Pennsylvania Railroad

Company on the traffic that under the Commission's said order would secure rates over the prescribed through routes not subject to back-haul charge," the District Court by order dated March 22, 1944, stayed the operation and enforcement of the aforesaid order of the Commission pending the perfection and determination of said appeal.

The questions presented by this appeal are substantial. They concern the character, scope, and extent of the Commission's power to order the establishment of new through routes which short-haul a participating railroad without its consent. Aside from the local situation immediately affected, the decision of the District Court, if allowed to stand, would appear to work an implied repeal of the short-hauling restriction of Section 15 (4) of the Interstate Commerce Act on the Commission's power to prescribe through routes, which would have a far-reaching effect detrimental to railroads generally and ultimately to the interests of the shipping public.

The principal questions presented by this appeal are novel and arise under the exception contained in clause (b), Section 15 (4) of the Interstate Commerce Act as amended by the Transportation Act of 1940 (54 Stat. 911-912), to the limitation in said Section 15 (4) upon the Commission's power to order the establishment of a proposed new through route which short-hauls a participating railroad without its consent. These novel questions include the following:

1. Whether the Commission may so order the establishment of such a proposed new through route upon findings that the existing route is not as adequate and efficient as the proposed route, so far as the shipper is concerned, and that the proposed route would be more economical to the shipper, and without any findings that

the existing routes are inadequate and that the proposed route would be more efficient or more economical than the existing through routes from the standpoint of the railroads performing the transportation.

2. Whether the exception in clause (b) becomes operative if existing through routes furnish adequate transportation from point of origin to point of destination.

3. Whether the comparison of the proposed through route as to efficiency and economy, contemplated by clause (b), is with the existing direct through routes from point of origin to point of destination.

#### **E. Cases Sustaining the Supreme Court's Jurisdiction of the Appeal.**

*Interstate Commerce Commission v. Union Pacific Ry. Co.*, 222 U. S. 541, 547;

*Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91-92;

*United States v. Missouri Pacific R. Co.*, 278 U. S. 269;

*Ann Arbor Railroad Co. v. United States*, 281 U. S. 658;

*Florida v. United States*, 282 U. S. 194, 211-215;

*United States v. Baltimore & Ohio Railroad Co.*, 293 U. S. 454, 463-465;

*United States v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499, 504-511.

#### **F. Opinion and Decree of the District Court.**

Appended to this statement are copies of (1) the opinion and conclusions of the District Court dated March 2, 1944, and (2) the final decree of said Court sought to be reviewed, dated March 22, 1944.



We therefore respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated May 15, 1944.

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**APPENDIX "A".****IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND.**

Civil No. 2091

**THE PENNSYLVANIA RAILROAD COMPANY, et al.,** *Petitioners,**vs.***UNITED STATES OF AMERICA,** Defendant Interstate Commerce Commission, D. A. Stickell & Sons, Inc., *Interveners-Defendants*

Before Soper, United States Circuit Judge, and Coleman and Chesnut, United States District Judges

Argued January 26, 1944. Opinion Filed March 2, 1944.

I concur, Morris A. Soper, U. S. Circuit Judge.

I concur, W. Calvin Chesnut, U. S. District Judge.

COLEMAN, District Judge:

This suit is instituted under Section 17 (9) of the Interstate Commerce Act (49 U. S. C. A. Sec. 17 (a)) and the provisions of the Act of Congress of October 22, 1913 (c. 32, 38 Stat. 219, 28 U. S. C. A. Secs. 41 (28), 43-48), to enjoin the operation and effect of an order of the Interstate Commerce Commission.

This order requires the establishment of certain additional through routes and joint rates and charges applicable thereto, on shipments of grain and grain products, originating at points in States included in what is commonly known as Central Territory (defined generally as that territory lying north of the Ohio River, south of the Great Lakes, east of Chicago, St. Louis and Cairo, Illinois, and west of Buffalo and Pittsburgh), and carried to Hagerstown, Maryland. There, the grain and grain products are allowed to be held over under what is known as a transit privilege, for the purpose of being manufactured into live stock and poultry feed, and then the

manufactured product is reshipped to destinations on the lines of the Pennsylvania Railroad east of York, Pennsylvania, and Fulton Junction (Baltimore), and between New York City and Cape Charles, Virginia, inclusive, and more particularly to destination points in Delaware, Maryland and Virginia between the Chesapeake and Delaware Bays, some times called the Del-Mar-Va Peninsula. The Pennsylvania Railroad is the only carrier serving these latter points. The so-called transit privilege allowed at Hagerstown rests, like other transit privileges such as creosoting lumber or fabricating iron and steel, upon the fiction that the incoming and the outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination.

Thirteen carriers affected by this order are the petitioners in the present suit. The defendant is the United States, and interveners-defendants are the Interstate Commerce Commission and D. A. Stickell & Sons, Inc., a Maryland corporation engaged in the milling and mixing of grain, grain products and grain by-products, and in the manufacture of mixed live stock and poultry feed at Hagerstown, Maryland, this company being the original petitioner before the Interstate Commerce Commission on whose complaint the Commission's order here under review was passed.

Independently of the Commission's order, there are, and have been for some time, joint rates in effect on grain and grain products with the so-called transit or mixing privilege at Hagerstown, Maryland, and other points, applicable from points of origin in Central Territory, to all points in so-called Trunk Line Territory, which is generally defined as that territory east of Central Territory and west of New England, New York City and Norfolk, Virginia. However, these existing joint rates are restricted by the carriers so that they apply only over certain through routes. For example, they do not apply on traffic originating in Central Territory or west thereof, if destined to points on the Pennsylvania Railroad, unless that carrier receives the traffic at or west of Pittsburgh or Buffalo. A similar situa-

tion exists with respect to traffic moving over the Baltimore & Ohio Railroad. As a result, these existing through routes of the latter road and of the Pennsylvania, through Hagerstown, embrace out-of-line hauls of 48 and 149 miles, respectively. The Pennsylvania's out-of-line haul is from its Enola Yard, a point on the Susquehanna River opposite Harrisburg, to Hagerstown and return, for which out-of-line or back-haul operation, the Pennsylvania charges, in addition to the joint through rate with the transit privilege at Hagerstown (which is  $26\frac{1}{2}\text{¢}$  per 100 pounds from Chicago to Salisbury, Maryland),  $4.5\text{¢}$  per 100 pounds, or  $90\text{¢}$  a ton. It will thus be seen that this additional charge is approximately 17% of the through rate.

The Stickell Company does not contest the reasonableness per se of this back-haul charge or of the joint rates, but claims that this extra charge almost completely destroys its margin of profit on the sale of its products. However, Stickell's basic claim is for better transportation service, on the ground that the existing route via Hagerstown over the Pennsylvania as just described, being indirect with an out-of-line back-haul, is inadequate, inefficient and uneconomical, and results in its shipments being unduly delayed in reaching customer consignees, thus placing it at a disadvantage as respects its competitors not located in Hagerstown but who buy their grain and grain products from the same general territory, and ship to the same markets.

Taking Chicago as a representative point of origin and Salisbury, Maryland, as a representative destination point, one of the new routes to and through Hagerstown, Maryland, ordered by the Commission and designated as route 1, embraces the use of the New York Central to Youngstown, Ohio; the Pittsburgh & Lake Erie from there to Connellsville, Pennsylvania; thence by the Western Maryland to York, Pennsylvania; where the Pennsylvania finally receives the traffic and hauls it to destination. Similarly, new route 2 ordered by the Commission, embraces the use of the Wabash to Toledo, Ohio, the Wheeling & Lake Erie to Pittsburgh Junction, Ohio, the Pittsburgh & West Virginia to Connellsville, Pennsylvania, and there-



after the haul being the same as by new route 1 ordered by the Commission. However, such routes short-haul the Pennsylvania, that is to say, require it to embrace in such routes substantially less than the entire length of its lines between the termini of such routes. For example, again using Chicago as a representative origin point and Salisbury, Maryland, as a representative destination point, the distance over the direct route of the Pennsylvania alone, is 902 miles, whereas if the Pennsylvania is required to put into effect the new routes ordered by the Commission whereby it would participate in the traffic only from Fulton Junction, Baltimore, or York, Pennsylvania, its haul would be only 155 miles and 114 miles, respectively, or a reduction of 747 and 788 miles, respectively. This, the Pennsylvania contends, the Commission cannot lawfully require it to do without its consent.

No testimony was taken before this Court, the case being presented on the record of the proceedings before the Interstate Commerce Commission.

Under the provisions of Section 15 (3) of the Interstate Commerce Act (49 U. S. C. A. Sec. 15 (3)), the Interstate Commerce Commission "may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges . . . ." Section 15 (4) of the Act, as amended by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15 (4)), imposes limitations upon this power of the Commission, as follows: "In establishing any such through route the Commission shall not (except as provided in section 3, (not involved here) and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which

could otherwise be established, or (b) *unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.*" (Italics inserted.)

Relying upon clause (b) of Section 15(4) of the Act just quoted, Stickell, in 1941, filed in a complaint with the Commission against a large number of railroads, seeking the establishment of the two additional through routes and joint rates and charges applicable thereto, which we have just described. After due hearing, at which testimony was taken before an examiner of the Commission, he recommended that the relief sought be granted. The matter came on for argument before Division 2 of the Commission, and on March 18, 1943, that Division rendered its decision, ordering the establishment of the new through routes. *D. A. Stickell & Sons, Inc. v. The Alton Railroad Co.*, 255 I. C. C. 333. Thereupon, the carriers, pursuant to their statutory right, petitioned the entire Commission to review the decision of Division 2, but the Commission, by order of October 4, 1943, denied, without report, the petition for reargument and reconsideration, although by interim and subsequent orders, it modified its order of March 18, 1943, so as to become effective on March 17, 1944, upon thirty days notice. This effective date has been further extended by the Com-

mission, in view of this pending proceeding, to April 17, 1944. As a result of this action, the carriers involved are required to file with the Commission, not later than March 17, 1944, tariffs establishing the joint rates over the prescribed new through routes, to become effective not later than April 17, 1944, unless the Commission's order is suspended and annulled by this Court. If such is not done, and petitioners fail to obey the Commission, they would be subject to a penalty of \$5,000 for each day each violation thereof continues (49 U. S. C. A. Sec. 16 (8)).

The following passages taken from its report embrace the Commission's reasons for its action (255 I. C. C. 341-344): "It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of section 3 (4) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line.

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"Prior to the amendment of section 15 (4), the Commission's power to prescribe through, all-rail, routes which would short haul any carrier participating therein without its consent was limited to instances where the inclusion of the entire length of its railroad between the termini of such routes would make the through route unreasonably long as compared with another practicable route which could otherwise be established. While that section limited the powers of the Commission, it left it entirely within the discretion of the carrier as to whether it would insist upon its long haul. It was at liberty to voluntarily join in any route which it believed to be more adequate, efficient, and economical than a route embracing its entire line, although the latter route might not be unreasonably long. Therefore,

no exception to the restriction on the Commission's power was necessary to protect carriers' interests.

"As to the shippers, however, a different situation existed. It rests within the power of carriers by insistence on their long hauls to place localities and shippers on the lines of other carriers or not on their direct lines at severe rate and competitive disadvantages and, as in the instant case, to deprive shippers of relatively equal opportunities to compete in markets served only by them. Carriers in many instances availed themselves of the right to their long haul, and the disadvantaged localities and shippers had no redress. It was to remedy that situation, apparently, that the second exception was added. The Commission was thereby given authority, when it finds that through routes are 'needed in order to provide adequate and more efficient or adequate and more economic transportation,' to require the establishment of such routes although they may short haul one or more of the participating carriers. We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint. That such was the intent of the Congress is evident from the conditions the amendment was apparently designed to correct, from the fact that in the added proviso even the preference to be accorded the originating carrier is made subservient to the public interest, from both limitations on the right of a carrier to retain its long haul, and from the fact that the Congress specifically provided that, as between carriers, 'No through route or joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.'

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be



45 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described.

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origin to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola yard near Harrisburg."

All parties to the present proceeding concede that clause (a) of Section 15 (4) is not involved, because the existing direct routes are shorter than the proposed routes and the Commission so found. For example, the distance from Chicago to Salisbury, Maryland, over the direct route of the Pennsylvania is 902 miles, whereas over new route 1 ordered by the Commission, the distance is 946 miles via Fulton Junction (Baltimore), and via York, 958 miles; and over route 2, via Fulton Junction (Baltimore), 938 miles, and via York, 950 miles.

It will thus be seen that two basic questions are presented for decision: First, what is the precise character of the restriction which clause (b) of Section 15 (4) of the Act places upon the Commission's power to order the establishment of new through routes which short haul a railroad without its consent; and second, has the Commission, in the present case, exceeded the authority granted it by clause (b)?

#### The Meaning of Clause (b) of Section 15 (4) of the Act.

With respect to the interpretation to be given to clause (b) which has not heretofore been construed in any reported court decision, the gist of the carriers' contention is that the Commission is restricted in prescribing through routes to cases where the need is proven for "adequate, and more efficient or more economic" *physical* facilities, instrumentalities and services. That is to say, the carriers contend that the meaning of clause (b) is to make the short-hauling

restriction embodied in the initial clauses of Section 15 (4) inapplicable only where existing routes do not provide "adequate, and more efficient or more economic, transportation" in the *operating* sense, that is, as the word "transportation" is defined in Section 1 (3) (a) of the Interstate Commerce Act (49 U. S. C. A. Sec. 1 (3) (a)), which is as follows: "The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported." The carriers contend that the existing through route is not only entirely adequate but is also more efficient and more economic when tested by an operations' criterion.

On the other hand, the shipper and the Commission contend that the only reasonable interpretation of the exception in clause (b) is that it means, as the Commission held in its opinion, "adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint." In other words, the shipper and the Commission assert that the switching and terminal services at Harrisburg in breaking up through trains from the west, and in diverting shipments for the back-haul of 148 miles to the Pennsylvania's branch line to Hagerstown which runs southwest from Harrisburg, when the ultimate destination of shipments are points east of Harrisburg; that repetition of the same operations when the shipments are returned from Hagerstown to Harrisburg and are there stopped and switched into eastbound trains for movement to destination; and that also the additional delays and terminal services incident to switching cars from the Pennsylvania to the Western Maryland tracks at Hagerstown, and from the Western Maryland back to the Pennsylvania tracks for the movement north from Hagerstown to Harrisburg, are all factors which the Commission was permitted to take into account in determining whether the new through routes prescribed were "needed in order to

provide adequate, and more efficient or more economic, transportation."

In order to determine the true meaning of clause (b) and, therefore, the precise extent of the Commission's power under this clause, it is necessary to review its legislative history. The original Act to Regulate Commerce approved February 4, 1887, 24 Stat. L. 379, 384, gave to the Interstate Commerce Commission no authority to prescribe through routes and joint rates, that power being first conferred by an amendment to Section 15 of the original Act embraced in the Hepburn Act of June 29, 1906, 34 Stat. L. 584, 590, but this power was limited in that it could only be exercised in case "no reasonable or satisfactory through route exists." By the Mann-Elkins Act of June 18, 1910, 36 Stat. L. 539, 552, this limitation was eliminated, but the first so-called short-haul restriction on the Commission's power was enacted as follows: "and in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established." By the Transportation Act of 1920, 41 Stat. L. 456, 485-486, this provision, as well as the general provision for the establishment of through routes and joint rates, was changed, the short-hauling restriction provision being enacted to read as follows (Section 15 (4)): "In establishing any such through route the Commission shall not \* \* \* require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: Pro-

vided, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may \* \* \* establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."

Following the legislation of 1920, the Commission had numerous occasions to construe clause (4) of Section 15 until the year 1929 and it had frequently, but not uniformly, interpreted that provision as protective only of the originating carrier or of a subsequent carrier only after it had obtained possession of the traffic. See, for example, *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C. 621, 630-631 (1913); *Flory Milling Co. v. C. N. E. Ry Co.*, 93 I. C. C. 129, 134 (1924); *Fort Smith S. & R. I. R. R. Co. v. A. & V. Ry. Co.*, 107 I. C. C. 523 (1926); *Routing of Grain*, 147 I. C. C. 782, 784 (1928). However, in 1929, the Supreme Court was called upon to construe clause (4) of Section 15 in *United States v. Missouri Pacific R. R. Co.*, 278 U. S. 269, commonly known as the *Subiaco* Case, the complaint having been initiated by the *Fort Smith, Subiaco & Rock Island R. R. Co. v. The Missouri Pacific R. R. Co.*, and a large number of other rail-carriers. The Commission made an order establishing through routes for west-bound traffic over the Subiaco. The Missouri Pacific sued to set aside the order, and a District Court, composed of three judges, held that the Commission was without power to establish the routes. 21 F. (2d) 351. The United States, the Commission and the Subiaco appealed and the lower court was affirmed, the Supreme Court holding that the protection granted by Section 15 (4) against short-hauling was not limited to the originating carrier or to a subsequent carrier getting possession of the traffic, but that it operated as a restriction upon the Commission's right to prescribe through routes which would short-haul *any* of the participating carriers.

Prior to this decision, there was pending before the Commission a proceeding instituted by Stickell & Sons, the same shipper that is complainant in the present case, for the establishment of additional through routes and joint rates on grain and grain products via Hagerstown, subject



to transit privileges at that point, similar to those required by the Commission's present order here under review. In 1928, in *Stickell & Sons v. Western Maryland Railway Co.*, 146 I. C. C. 609, the Commission found the establishment of these through routes and joint rates desirable in the public interest. A further hearing, however, was ordered in that case, but before the Commission made its final report, the Supreme Court rendered its decision in the *Subiaco* case, *supra*. Thereupon, the Commission, in a second report (153 I. C. C. 759) held that protection of the long hauls of the carriers involved was not shown to result in routes unreasonably long in comparison with those which complainant sought, and therefore, the Commission found that it was without power to require the establishment of additional through routes.

Following this decision, the Commission, in several of its annual reports to Congress, urged an amendment which would overcome this decision, and various bills were introduced in Congress for this purpose. However, no change was made in Section 15 (4) until the passage in 1940 of the Transportation Act, when the law as it now stands was enacted, embracing clause (b) which we have heretofore quoted and which is the provision here in issue.

So much for the evolution of the clause which we are called upon to interpret. This summary of the various legislative enactments which finally resulted in its adoption may be said still to leave some doubt as to the precise intent that lay behind the adoption by Congress of the phraseology of clause (b). In other words, a mere chronology of the various legislative steps fails to explain just how far Congress intended the Commission might go in invoking clause (b). However, reports of Congressional committees and explanatory statements made by their members in presenting a bill for passage are legitimate aids to the interpretation of a statute if there is any doubt as to the intended meaning of the language employed. *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S. 184; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *Wisconsin Railroad Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563; *United States v. Missouri Pacific Railway*

*Co., supra.* See also, *Helvering v. Griffiths*, 318 U. S. 371. Therefore, it is appropriate for us to resort to such interpretative aids in the present case.

First, it is appropriate to note, because not disputed, that the Commission requested of Congress complete authority to fix through routes and joint rates with no limitation other than that there must be proven need for same *in the public interest*. But Congress ultimately refused to go this far. In the bill which finally became the Transportation Act of 1940, 54 Stat. L. 898, and bore Senate number 2009 as first passed by the Senate (76th Cong. 1st Ses.), the short-haul restriction had been entirely eliminated from Section 15 (4). The House amended the bill and reinserted Section 15 (4). Thereupon, clause (b) was written into the bill by the Conference Committee on the disagreeing votes of the two Houses, in the form in which it was finally enacted. The report of the Conference Committee as submitted to the House contains an explanatory statement by Mr. Lea concerning the short-haul provision in which is to be found the following (H. R. Report, No. 2832, 76th Congress, 1st sess. pp. 70-71): "The House amendment made no change in the short-haul provision of section 15 (4) and the exceptions thereto. The Conference substitute in section 10 (b) retains them and includes another exception by providing that the restriction against short-hauling a rail carrier shall not apply where the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation. The Commission, in the exercise of this additional authority, is directed to give reasonable preference in any particular case to the carrier by railroad which originates the traffic, so far as is consistent with the public interest and subject to the limitations with respect to unreasonably long routes and the necessity of providing adequate and more efficient or more economic transportation. The Commission is prohibited from establishing any through route and joint rates applicable thereto for the purpose of assisting any carrier that would participate therein to meet its financial needs."

There is little to be derived from other Committee reports which throws any further light upon just what meaning Congress intended to attach to the use of the words "adequate, and more efficient or more economic transportation." The carriers' brief is replete with extensive quotations of statements made by railroad witnesses at hearings which were held before various Congressional committees in connection with a number of independent through route bills which, however, were never enacted. The carriers stress the fact that these witnesses used the words "efficient" and "economic" from a railroad operating standpoint. However, conceding that they did, and apart from any question as to our right to resort to such statements as an aid in interpreting the meaning of a statute (in *Helvering v. Griffiths*, supra, the Supreme Court would appear to indicate, contrary to its earlier decisions, that *any* statement or debate made in Congress relative to a particular bill may be resorted to as an interpretative aid in case of doubt as to its meaning as enacted) we conclude that, with the legislative history and background which we have just reviewed, the better view is that the words employed in clause (b) clearly indicate that Congress must have intended the broad meaning which the Commission has given to these words, rather than the restricted meaning upon which the carriers are insisting.

For example, one of the prerequisites of clause (b) before the new through route may be established is that it is needed in order to provide "adequate transportation." Obviously, Congress could not have been referring to the carriers by employing these words because it would be meaningless to speak of the railroad itself needing "adequate transportation." On the other hand, it is a truism to say that the shipping public may have need for such. It is true the adjective "adequate" does not stand alone but is coupled with the adjectives "efficient" and "economic," and these adjectives, of course, must reasonably be construed as referring either to the services received by the shipper or to operations from the railroad standpoint, or to both. Since all three adjectives employed qualify the same noun, "transportation," and since, as

we have seen, it would not be sensible to say that the noun when qualified by the first of these adjectives was intended to relate to something which the carrier, as opposed to the shipper, needed, it is, therefore, entirely reasonable to say that the other two adjectives must be taken as having been employed for the purpose of qualifying the same noun when used in the letter sense, but also when used in an operating sense because their qualifying of the noun "transportation," unlike the adjective "adequate," is just as meaningful with reference to carriers' as to shippers' needs.

Language somewhat similar to that under discussion is to be found in Section 15 (a) (2) of the Interstate Commerce Act as amended by the Act of June 16, 1933 (48 Stat. 220), as follows: "In the exercise of its power to prescribe just and reasonable rates the Commission *shall give due consideration*, among other factors, \* \* \* *to the need, in the public interest of adequate and efficient railway transportation service* at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Italics inserted). Also, in the further amendment of this Section by the Transportation Act of 1940 (49 U. S. C. A. Sec. 15 (a) (2)), we find the identical language. It will thus be seen that the phraseology now before us is in effect merely an abbreviation of the phraseology which Congress had previously employed in another part of the Interstate Commerce Act as early as 1933. There can be no doubt as to the meaning of the language then and there employed, because it is plain and unambiguous to the effect that the needs of both the shipping public and the carriers must be safeguarded. Thus, it is only logical to say that when Congress employed similar but somewhat abbreviated language in Section 15 (4) (b), it did so with the same purpose in mind.

Support for this view is found in decisions of the Supreme Court construing the term "public interest" in the Transportation Act of 1920, the Emergency Railroad Transportation Act of 1933, and the Transportation Act



of 1940. For example, in *New York Central Securities Co. v. United States*, 287 U. S. 12, in referring to the criterion, "public interest," as used in Section 5 of the Interstate Commerce Act (as amended by the Transportation Act of 1920, whereby consolidations of carriers were permitted when the Commission found them to be in the "public interest," the Court said (pages 24-25): "Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the 'public interest.' It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of the Act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure *adequacy in transportation service* . . . . The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but *has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred.*" (Italics inserted.)

This language has been adopted and quoted in several later decisions of the Supreme Court, relating to carrier consolidations. For example, we find reaffirmance of it in *Texas v. United States*, 292 U. S. 522, 531; in *United States v. Lowden*, 308 U. S. 225, 230, and again, in a very recent decision, *McLean Trucking Co. v. United States*, decided January 17, 1944, where the following is said, (page —): "The national transportation policy is the product of a long history of trial and error by Congress in attempting to regulate the nation's transportation facilities beginning with the Interstate Commerce Act of 1887. For present purposes it is not necessary to trace the his-

tory of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts. 'Therefore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates;' and emphasis on the preservation of free competition among carriers was part of that effort. The act of 1920 added 'a new and important object to previous interstate commerce legislation.' It sought 'affirmatively to build up a system of railways prepared to handle promptly the interstate traffic of the country.' *Dayton-Goose Creek R. R. v. United States*, 263 U. S. 456, 478; *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277. And in administering it, the Commission was to be guided primarily by consideration for 'adequacy of transportation service, . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facilities . . .' *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25."

It is to be noted that Section 15 (3), upon which Section 15 (4) of the Act is a limitation, employs the term "public interest." Thus, although Congress did not add the word "service" after the word "transportation" in clause (b) of Section 15 (4), as the Supreme Court did when referring to adequate, economic and efficient transportation in *New York Central Securities v. United States*, and the later decisions, *supra*, adopting the same view, it is only reasonable to assume that Congress meant the same thing. If further support be needed for this conclusion, we feel that it is to be found in the declaration of a national transportation policy as defined in the Transportation Act of 1940 (49 U. S. C. A. Sec. 301, note), which asserts that "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to *promote safe, adequate, economical and efficient service* and foster sound economic conditions in transportation and among the several carriers . . ." (Italics inserted.)

We find nothing inconsistent with the foregoing in the definition of the term "transportation" as explained in Section 1 (3) (a) of the Act (49 U. S. C. A. Sec. 1 (3) (a)) which we have heretofore quoted, and upon which the carriers place much reliance, because this definition is one of expansion, of inclusion rather than of limitation; and furthermore, while it is true that it embraces "instrumentalities and facilities of shipment or carriage", it equally embraces "all services" in connection with the receipt, transportation, delivery and handling in any form of shipments consigned to carriers. In short, it would be absurd to say that this use of the word "services" is not confirmatory of the basic policy to safeguard the shippers' interests.

It is to be noted that Section 15 (4); in the proviso immediately following clause (b), recites "that in prescribing through routes the Commission shall, *so far as is consistent with the public interest*, and subject to the foregoing limitations of clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic." (Italics inserted.) So the Commission cannot preserve the long-haul even to the originating carrier if such would be contrary to the public interest, namely, in such case, the shipping public. The carriers contend that if the Commission's interpretation of clause (b) is allowed to stand, a carrier may be short-hauled every time a shipper can show that it will be cheaper or more efficient from his standpoint alone, if that is done. This is not our view. Under the construction which we give to clause (b), even if the shipper is able to prove that the proposed new route would give him more efficient or more economic transportation,—better (as for example quicker) or cheaper service,—since, by the express language of paragraph (3) of Section 15, the Commission may never establish a through route unless "deemed by it to be necessary or desirable in the public interest," we have no doubt but that this language, fairly interpreted, must be taken to include also considerations of railroad operating efficiency and economy, which, in a given case, may control over considerations in the shipper's favor.

Finally, we feel we scarcely need say more to make it clear that the Transportation Act of 1940, is very broad, remedial legislation. For this reason, as the Supreme Court has

said about the Transportation Act of 1920, it should "be given a liberal interpretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended." *Piedmont & Northern Railway v. Interstate Commerce Commission*, 286 U. S. 299, 311-312. See also, *McDonald v. Thompson*, 305 U. S. 262, 266; *Gregg Cartage Co. v. United States*, 316 U. S. 74, 83.

To summarize our conclusions as to the precise character of the restriction which clause (b) of Section 15 (4) of the Act imposes upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent, we are of the opinion that the exception embodied in that clause must be interpreted to mean "adequate, and more efficient or more economic, transportation" from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier.

Having thus interpreted clause (b) of Section (4), we now turn to a consideration of the question whether the Commission, in the present case, has, as the carriers contend, exceeded the authority granted it by this clause.

### The Commission's Findings

The principal findings of fact made by the Commission may be summarized as follows: The margin of profit of Stickell's products is small. The two principal items involved in the prices at which these products are sold are the amounts paid for the ingredients and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, New York; Fort Wayne and Indianapolis, Indiana; Cincinnati, Toledo, Cleveland and Akron, Ohio; and Pittsburgh, Lancaster and York, Pennsylvania, can reach the markets in Delaware, Maryland and Virginia, between the Chesapeake and Delaware Bays, in competition with Stickell, at the same through rates as Stickell. However, Stickell, on grain purchased at these same points of origin when the Pennsylvania receives the traffic at or west of Pittsburgh or Buffalo, must pay 90¢ a ton more, or, when



other carriers perform the in-bound haul, then must pay combination rates. The new through rates in controversy are well established up to Hagerstown and are generally accepted as reasonable by both shippers and carriers to points in eastern territory. There is no proof that those routes would be less economical as parts of the entire new through routes to destinations in question on the Pennsylvania, than to destinations on the other carriers' lines in eastern territory. On the contrary, the new routes would not result in any cross-haul but would eliminate an out-of-line haul of 149 miles and two switching interchanges at Hagerstown, and would relieve the Pennsylvania of the expense of maintaining the transit privilege or service, and of absorbing the switching charges at Hagerstown, where the Western Maryland would bear all transit and switching expense.

The Pennsylvania interchanges traffic with the Western Maryland at York and Fulton Junction (the junction points that would be utilized under the new through routes) once every twenty-four hours; and while the interchange tracks at those junction points are now used to near, and some times to full capacity, operating conditions there are no more difficult than operating conditions now encountered at Hagerstown.

One day is required for transportation each way between Harrisburg and Hagerstown, and one day for each interchange, between the Western Maryland and the Pennsylvania at Hagerstown, or a total of four days consumed in the out-of-line haul, and on the average, an additional three to four days is required for the movement of a car from Stickell's plant to destination points in Delaware, Maryland and Virginia; whereas, based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, and on the fact that a car leaving Hagerstown via the Western Maryland late in the morning, arrives at Elsmere Junction (Wilmington, Delaware) on the Reading, the next morning, Stickell's estimate that there would be saved two days in reaching these destination points over the new through routes, is to be accepted as correct, because there is no categorical denial of same by the Pennsylvania, supported by concrete statistical data.

The Commission relied upon a further finding that in order to meet the demands of customers for prompt delivery, complainants had shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading to Elsmere Junction, thence by truck to points on the Delaware, Maryland, Virginia Peninsula.

We are fully satisfied, after an examination of the record before the Commission, that it contains ample, substantial evidence to support all of the findings of fact made by the Commission which we have just summarized, and that being the case, we are equally satisfied that these facts amply support the Commission's ultimate finding (255 I. C. C. 333 at 344) "that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation," within the meaning which we have found in the earlier part of this opinion must be given to clause (b) of Section 15 (4).

This Court may not disturb findings of fact made by the Commission unless it has acted arbitrarily or without substantial evidence to support its conclusions, or has transcended its Constitutional or statutory powers. *Interstate Commerce Commission v. Delaware, L. & W. Rwy. Co.*, 220 U. S. 235; *Proctor & Gamble v. United States*, 225 U. S. 282; *United States v. Louisville & Nashville R. R. Co.*, 235 U. S. 314; *Standard Oil Co. v. United States*, 283 U. S. 235; *B. & O. R. R. Co. v. United States*, 298 U. S. 349; *Purcell v. United States*, 315 U. S. 381; *Interstate Commerce Commission v. Hoboken Mfgs. R. R. Co.* decided December 6, 1943. In other words, the credibility of witnesses and the weight of the evidence are matters for the Commission and not for the courts to determine, and the Commission's findings in these respects cannot be reviewed by the courts if supported by substantial evidence.

Of course, the Commission would clearly not be justified in attempting to neutralize the disadvantage of geographical location such as Stickell has, by requiring of a carrier wasteful or additional service, without adequate compensation, even though Stickell might, for competitive or other business reasons, be in dire need thereof. But, there is an

absence of any convincing evidence in the present case that through the establishment of the new through routes, the Pennsylvania would not be adequately compensated or that its facilities or services which it owes to other shippers generally would be interfered with. The rates are to be the same for the new routes as for the existing ones. It is significant also, that Stickell's plant is not located upon the Pennsylvania Railroad at Hagerstown but upon the Western Maryland Railway. The latter carrier does not appear as a protestant of the Commission's action.

The gist of the carriers' contention as developed in the extensive arguments and briefs presented by their counsel, appears to be that in order to support the Commission's findings it must appear that the Commission itself found two things to be a fact: First, that the existing through route is inadequate; and second, that the prescribed new routes will be either more efficient or more economic from carriers' operating standpoint. Since, as it is contended, the Commission has found that the existing route is adequate, a finding of one of the prerequisites being lacking, the Commission's ultimate conclusion must be rejected.

This argument, we believe, is without merit. It is based upon the false premise that the short-hauling limitation in Section 15 (4) of the Act cannot be subject to *any* exception by virtue of clause (b) as long as there is *any* through route between the given termini which is satisfactory to other shippers; in other words, that there is no authority for ordering a through route to pass through any particular intermediate point. While, of course, it is true, there is no express requirement of law that routes *must* pass through particular intermediate points, and neither the short-hauling provisions nor any other provision of the Act can be read as implying such requirement (*United States v. Missouri Pacific R. R. Co.*, and *Stickell & Sons v. Western Maryland Railway Co.*, *supra*), it is illogical to say that where a carrier, as is true in the present case, is already serving a shipper by one through route, such shipper may not be heard on the question, and have the Commission determine whether he is entitled to a different and more advantageous through route. Thus, when the Commission found (255

I. C. C. 340) "that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations," this is not to be taken as a finding which precluded the Commission from determining whether Stickell is getting, by reason of such routes, all the through route service that it is entitled to. In short, as we interpret the law, Stickell has the right to have its individual case considered from the point of view whether it is entitled to a route that is not *only* adequate, but *also* affords it "more efficient",—that is, better,—or "more economic"—that is cheaper,—transportation service.

The record before the Commission shows that other plants on branch lines of the Pennsylvania are subject to back-hauls and back-haul charges. For example, a plant at Bedford, Pennsylvania, is charged 3¢. Another plant at Reading, Pennsylvania, is charged 3¼¢, and one at Frederick, Maryland, 3¾¢. But this is merely evidence of a practice and is not probative of the fairness of such practice when applied to the circumstances surrounding Stickell. Indeed, as the Commission very appropriately pointed out (255 I. C. C. 333 at 342), "The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes which do not."

We may assume the correctness of the carriers' evidence that via the prescribed new routes the total elapsed time for shipments to move from origin to destination points would, generally speaking, be longer than over the existing route. But this is not controlling, because what Stickell is most concerned with is prompt delivery of its *products*. As to them, there is no *through* movement except in the fictional sense. Of course, Stickell must count upon receiving its grain and grain products with reasonable promptness, so as to have on hand sufficient materials out of which to manufacture its products. But, practically speaking, the time taken for a carload of grain to reach the plant, would not control the time when a carload of the finished product



would leave the plant. It is the movement from plant to customer that is really at issue.

Likewise, we believe the Commission was correct in rejecting the contention of the Pennsylvania that the routes sought are not "necessary and desirable" in the public interest because the request for same was not supported by any shipper of grain or grain products at points of origin, or by any receiver or consumer of the mixed feed at destination points. Stickell's business is substantial. Its annual production is about 60,000 tons. It shipped in the year 1940, 675 cars over the existing route via the Pennsylvania, with the back-haul to Hagerstown. It is entitled to have its case individually and fully considered and determined.

It is true the evidence introduced before the Commission by the carriers was uncontradicted to the effect that the prescribed new routes would substantially increase the number of participating carriers and the number of interchange services. For example, on traffic originating at points in Central Territory (including market points not served by the Pennsylvania), these routes would, generally speaking, substitute 4 or 5-line hauls for 2-line hauls via the Pennsylvania; and where the traffic did not originate on the New York Central or the Wabash, would, generally speaking, involve 5 or 6-line hauls.

Also, it was shown that the interchange expense incident to multiple-line hauls as compared with single-line hauls, is substantial. For example, via the direct route of the Pennsylvania from Chicago to Salisbury, there is no extra operating expense involved for inter-carrier interchange; whereas, under the prescribed new routes, the interchange expense is an important item, in one or more instances (depending upon the precise routing) aggregating nearly \$40.00 per assumed box car equipment of 33 tons of grain. It is upon these facts that the carriers rest their argument in its last analysis, namely, that a carrier should be permitted to restrict origin and destination territory to points over such routes as will involve as few carriers as possible.

As respects comparative freight services costs, the Penn-

sylvania endeavored to prove by data presented to the Commission that these costs over the prescribed new routes would be much greater than over the existing routes. For example, on the same assumed box car equipment of 33 tons to Hagerstown and of 1.34 cars of out-bound products on the basis of 24.6 car tons after milling or mixing in transit, the freight service cost from Chicago to Salisbury, over the Pennsylvania's present route was shown to be \$184.10; whereas over the prescribed new routes 1 and 2, the cost was shown to be \$191.18 and \$232.08, respectively. However, we believe the Commission had the right to attach relatively limited value, as it did, to such cost studies, because based upon the Pennsylvania's average system costs and the average system costs of the other affected carriers, on all less-than-carload and carload freight, while in the present case, we are concerned with a heavy loading commodity, moving comparatively long distances, in well defined channels, which may well give rise to numerous different and controlling factors.

We believe it to be true, as the carriers contend, that, for the purposes of the precise issue now before us, little importance should be attached to the Commission's finding that in order to meet the demands of customers for prompt delivery, Stickell shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading, to Elemere Junction (Delaware), thence by truck to destination points, because the comparison contemplated by clause (b) of Section 15 (4) must be as between the proposed routes and existing routes by *railroad*, and a comparison of a combination rail-motor truck service with all-rail service over either routes, is not contemplated. However, when all of the other considerations which weigh most heavily in favor of the carriers which we have just analyzed, have been given their full weight, we are completely satisfied that the Commission was justified in finding them, on the evidence presented, to be subordinate to the considerations which favor the shipper.

The carriers maintain that the result of permitting the Commission to prescribe the new through routes will be an arbitrary exercise of power by the Commission in violation

of the due process provisions of the Fifth Amendment to the Constitution. However, no claim is made that the establishment of the prescribed new routes would, in fact, be confiscatory or that the carriers have a Constitutional right to have their long-hauls maintained. The long history of the legislation involving the carriers' rights in this respect and the clear assertion in the various decisions of the Supreme Court that the carriers have no such right, would seem sufficient to refute this contention. In short, unless the Commission has erred (1) in interpreting clause (b) of Section 15 (4); or (2) though correctly interpreting it, has, nevertheless, applied it in the present case in a manner not supported by substantial evidence, there can be no violation of the carriers' substantive rights.

It is claimed that the Commission's decision will establish a precedent which will have an injurious effect upon the rate structure and revenues of carriers generally,—that it will lead to demand for the general application of the same principle, thereby bringing about a complete change in the structure of through routes and joint rates on grain as effects Truck Line Territory, with resulting cross-hauling and increased expense of operation. The Commission's answer is that even if such be true, "that would be no reason for denying complainant just and reasonable through routes at the established joint rates." (255 I. C. C. at 337). We need not, and do not go that far, because this apprehension of the carriers is not supported by that degree of proof in the present record necessary to determine the over-all effect of this individual case, and there is enough to indicate that there may well be reasons for differentiating the situation at some, if not at all of the other transit points referred to.

There is one final point made in support of the carriers' contention, but we feel that a mere statement of it is a sufficient refutation of its application to the present case. We refer to the claim made by the Pennsylvania that since the Commission's order rests in part upon a finding of breach of duty under Section 3 (4) of the Interstate Commerce Act (49 U. S. C. A. Sec. 3 (4),) requiring a carrier to "afford all reasonable, proper, and equal facilities for the inter-

change of traffic between their respective lines and connecting lines. . . .," the carriers are entitled to a separate hearing before the Commission with respect to whether that particular provision of the law has been violated, and that the hearing which has been had was not an equivalent.

What the Commission said on this point is as follows (255 I. C. C. at 341): "It is the duty of carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of Section 3 (4) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line." This is a correct interpretation of the law. Merely because the Commission has seen fit to relate the two parts of the Act to each other, is no justification for saying that the present case must be converted or extended into a hearing under Section 3 (4). If, as a result of the new routes prescribed by the Commission becoming effective, new questions as to the sufficiency or equality of interchange facilities should arise, both the carriers and any shippers involved therein may seek an appropriate hearing before the Commission.

### **Conclusions.**

We conclude, for the reasons set forth, that the Commission has (1) correctly interpreted clause (b) of Section 15 (4) of the Transportation Act of 1940; (2) has applied it in the present case in a manner supported by substantial evidence; and (3) that such application violates no Constitutional rights of the petitioning carriers. Therefore, the petition must be dismissed.

In view of the nature of this case, the Interstate Commerce Commission having made findings of fact, and this Court finding substantial evidence to support the same, it



is assumed that no further or other statement of the ultimate or evidentiary facts is required under Rule 52 of the Federal Rules of Civil Procedure beyond those stated in the opinion; and also that the conclusions of law herein need not be separately stated.

William C. Coleman.

### **APPENDIX "B".**

#### **IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND**

Civil Action No. 2091.

PENNSYLVANIA RAILROAD COMPANY, et al., *Petitioners*,

*v.*

UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION, D. A. STICKELL & SONS,  
INC., *Intervening Defendants*.

#### **Final Decree.**

This cause having come on to be heard upon final hearing, upon the pleadings, proofs, arguments and briefs, of petitioners and defendant and intervening defendants, before a duly constituted District Court of three judges pursuant to the provisions of law, and upon consideration thereof, and the Court being fully advised in the premises, it is hereby finally determined, ordered and decreed as follows:

1. The order of the Interstate Commerce Commission made on March 18, 1943, in Docket No. 28647, *D. A. Stickell & Sons, Inc. v. Alton Railroad Company et al.*, 255 I. C. C. 333, was within the statutory authority of the Commission

and was made upon substantial evidence and in accordance with applicable law and is in all respects valid.

2. The relief prayed for in the complaint is hereby denied and the complaint is dismissed for want of equity at petitioners' costs.

MORRIS A. SOPER,  
*United States Circuit Judge;*  
WILLIAM C. COLEMAN,  
*United States District Judge;*  
W. CALVIN CHESNUT,  
*United States District Judge.*

Dated March 22, 1944.

(2632)







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CHARLES ELMORE GROPLEY  
CLERK

**IN THE**  
**Supreme Court of the United States**  
OCTOBER TERM, 1944.

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**No. 182.**

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**THE PENNSYLVANIA RAILROAD COMPANY; THE  
ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY; THE BALTIMORE AND OHIO RAILROAD  
COMPANY, et al.,**

**Appellants,**

**v.**

**UNITED STATES OF AMERICA, INTERSTATE COM-  
MERCE COMMISSION, D. A. STICKELL & SONS, INC.,**  
**Appellees.**

---

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND.**

---

**BRIEF FOR APPELLANTS.**

---

H. C. BARRON,  
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December 20, 1944.



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**IN THE**  
**Supreme Court of the United States**

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OCTOBER TERM, 1944. No. 182.

---

THE PENNSYLVANIA RAILROAD COMPANY;  
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;  
THE BALTIMORE AND OHIO RAILROAD COMPANY;  
CHARLES M. THOMSON, As Trustee of the Property of THE  
CHICAGO AND NORTH WESTERN RAILWAY COMPANY, A  
Corporation;  
CHICAGO, MILWAUKEE, ST. PAUL and PACIFIC RAILROAD COM-  
PANY (Henry A. Scandrett, Walter J. Cummings and  
George I. Haight, Trustees);  
JOSEPH B. FLEMING and AARON COLNOR, Trustees of THE  
CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY;  
LOUISVILLE AND NASHVILLE RAILROAD COMPANY;  
G. W. WEBSTER and JOSEPH CHAPMAN, Trustees of MINNE-  
APOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COM-  
PANY;  
GUY A. THOMPSON, Trustee, MISSOURI PACIFIC RAILROAD  
COMPANY, Debtor;  
THE NEW YORK CENTRAL RAILROAD COMPANY;  
THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY;  
SOUTHERN RAILWAY COMPANY;  
WABASH RAILROAD COMPANY;

*Appellants,*

v.

UNITED STATES OF AMERICA,  
INTERSTATE COMMERCE COMMISSION,  
D. A. STICKELL & SONS, INC.

*Appellees.*

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND.

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**BRIEF FOR APPELLANTS.**

### **OPINIONS BELOW.**

The opinion of the specially-constituted District Court for the District of Maryland, *Pennsylvania R. Co. v. United States*, 54 F. Supp. 381, appears in the Record at page 77, and its final decree at page 102.

The report of the Interstate Commerce Commission, Division 2, *D. A. Stickell & Sons, Inc. v. Alton R. Co.*, 255 I. C. C. 333, is set forth in the Record at page 27, and its accompanying order at page 41.

The Commission itself made no report in connection with its order (R. 43) denying the petition of defendant railroads for reargument and reconsideration (R. 126). For convenience the report and order of Division 2 will hereinafter be referred to as the report and order of the Commission.

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### **JURISDICTION.**

The jurisdiction of this Court is invoked in accordance with the authority contained in U. S. Code, Title 28, Sections 47a and 345, for the taking of a direct appeal to this Court from the final decree of a United States District Court, made pursuant to the provisions of U. S. Code, Title 28, Sections 41 (28), 43-48, and Title 49, Section 17 (9), refusing to enjoin, set aside, annul, or suspend an order of the Interstate Commerce Commission. The final decree of the District Court was entered on March 22, 1944 (R. 102). Petition for appeal was presented and allowed on May 15, 1944 (R. 108). Probable jurisdiction was noted by this Court on October 9, 1944 (R. 477).

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### **STATUTE INVOLVED.**

The statute here involved is the Interstate Commerce Act, as amended, herein termed the Act, and particularly the provisions thereof which delimit the power



of the Interstate Commerce Commission to prescribe through routes. 49 U. S. C., Sec. 15 (3) and (4). More specifically the case involves the interpretation and application of clause (b) as added to paragraph (4) by the Transportation Act of 1940. (54 Stat. 911-912). Paragraphs (3) and (4) of Section 15 are set forth in Appendix 3 to this brief at pages 4a-5a hereof.

### STATEMENT OF THE CASE.

#### Nature of the Case.

This is a direct appeal from the final decree (R. 102) of the specially-constituted District Court of the United States for the District of Maryland which denied and dismissed the petition (R. 3) of appellants for an interlocutory and a final injunction to suspend, set aside, and annul the order (R. 41) of the Interstate Commerce Commission, Division 2, of March 18, 1943, in its Docket No. 28647, *D. A. Stickell & Sons, Inc., v. The Alton Railroad Company et al.*, 255 I. C. C. 333 (R. 27), which order required the railroads defendants therein to establish and maintain certain new through routes.\*

Appellants herein (petitioners below) are thirteen trunk-line railroads which were defendants in the said proceeding before the Commission and against which the order of the Commission runs (R. 41-43). Appellees are the United States, the statutory defendant (28 U. S. C., Sec. 46), and the Interstate Commerce Commission and *D. A. Stickell & Sons, Inc.*, interveners-defendants below.

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\*"A through route is an arrangement, expressed or implied, between connecting railroads for continuous carriage from a point on the line of one to a destination on the line of the other." *Quannah, A. & P. Ry. Co. v. Atchison, T. & S. F. Ry. Co.*, 211 I. C. C. 389, 390-391.

"While a joint rate is not essential to show the existence of a through route, the establishment of joint rates presupposes through routes. *Western Pac. R. Co. v. Northwestern Pac. R. Co.*, 191 I. C. C. 127, 131." *Seatrains Lines, Inc. v. Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7, 17.

**Proceedings Before the Commission.**

The order of the Commission, the validity of which is here involved, was made in a proceeding upon the petition of said D. A. Stickell & Sons, Inc., herein termed complainant, a corporation of the State of Maryland, engaged in the manufacture of mixed livestock and poultry feeds at Hagerstown, Md. (R. 22, 27, 41).

Complainant obtains its inbound materials, consisting of grain, grain products, and various by-products from grain elevators, grain mills, vegetable oil mills, and food manufacturing plants in Kansas, Missouri, Minnesota, Idaho, Illinois, Indiana, and Ohio. The bulk of its production moves to points in New England, eastern Pennsylvania, Delaware, and the so-called Del-Mar-Va peninsula, the latter being that part of Delaware, Maryland, and Virginia south of Wilmington, Del., and between the Chesapeake and Delaware bays. About 50 or 60 percent of its production, and about 90 percent of that part thereof that is handled by the Pennsylvania Railroad, moves to points in the Del-Mar-Va peninsula. The Pennsylvania is the only railroad serving these points (R. 28).

Hagerstown is between Cumberland and Baltimore, Md., on the main line of the Western Maryland Railway. It is served by a branch line of the Pennsylvania extending from Harrisburg, Pa., to Winchester, Va., and by a branch line of the Baltimore & Ohio extending north from Weverton, Md., on its main line. Hagerstown is also the terminus of the line of the Norfolk & Western Railway from Roanoke, Va. (R. 29).

So-called transit arrangements are maintained by the several railroads at Hagerstown whereby complainant is enabled to receive its inbound materials, mix them into feed, and ship its products to destination at the same rate (plus a transit charge) as if there had been a through shipment of the manufactured product direct from origin to destination. Where an out-of-line haul,

or "back-haul" is necessary to reach the transit point, as is the case when the route of the Baltimore & Ohio or Pennsylvania to and from Hagerstown is employed, an additional charge is made therefor. For the out-of-line haul of the Pennsylvania of 74.5 miles in each direction between Enola Yard (Harrisburg) Pa., and Hagerstown, a back-haul charge of 4.5 cents per 100 pounds is assessed (R. 29, 30).

The Pennsylvania's transit arrangement at Hagerstown on grain, grain products, and by-products was established on May 5, 1921, at the request of complainant (Ex. 45; R. 409, 410, 271-274, 338). Complainant's carload shipments of inbound materials and outbound products over the routes of the Pennsylvania have increased steadily in recent years. For 1940, the last full year for which such shipments are shown of record, 509 carloads of inbound materials were received, and 675 carloads of outbound products were shipped over the Pennsylvania's route via Enola Yard (Ex. 60; R. 459, 308, 338).

Complainant's petition (R. 22) was filed with the Commission on April 9, 1941. As amended at the hearing it sought an order under Section 15 of the Act [49 U. S. C. 15(3)] requiring defendant railroads, including these appellants, to join in the establishment of certain new through routes via Hagerstown applicable to the transportation of grain, grain products, and by-products, originating at stations in Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, Nebraska, and Missouri, to stations on the Pennsylvania Railroad east of York, Pa., and Fulton Junction (Baltimore), Md., and between New York, N. Y., and Cape Charles, Va., and particularly points on the Del-Mar-Va peninsula (R. 27, 28).

The new through routes specifically proposed by complainant, and subsequently prescribed by the Commission's order, were referred to as routes 1 and 2, viz.,

"(1) From the markets and origins in central territory\* on The New York Central Railroad Company and its connections others than the Pennsylvania via New York Central to Youngstown, Ohio, Pittsburgh & Lake Erie to Connellsville, Western Maryland to Hagerstown, thence Western Maryland to York or Fulton Junction, and the Pennsylvania beyond; and (2) from the same markets and origins on the Wabash Railway Company and its connections other than the Pennsylvania in central territory via the Wabash to Toledo, Ohio, The Wheeling and Lake Erie Railway Company to Pittsburgh Junction, Ohio, Pittsburgh & West Virginia to Connellsville, Western Maryland to York or Fulton Junction, and the Pennsylvania beyond" (R. 31).

Over the proposed through routes complainant sought the establishment of, and the Commission prescribed, the same joint rates as applied over the direct routes of the Pennsylvania which involve no back-haul to and from Hagerstown (R. 42-43).

The complaint before the Commission did not question the reasonableness of the Pennsylvania's out-of-line charge when such service was performed, but the objective of its complaint was to escape such charge through the prescription of through routes employing the lines of the Western Maryland through Hagerstown which would not involve out-of-line or back-haul service. (R. 30-31, 259), Petition, par. XI (R. 9); admitted by answer of U. S., par. 3 (R. 54); and in effect admitted by answers of I. C. C., par. VI (R. 45), and Stickell, par. XI (R. 61).

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\* Central Territory, as stated by the Court below (R. 78) is "defined generally as that territory lying north of the Ohio River, south of the Great Lakes, east of Chicago, St. Louis, Cairo, Illinois, and west of Buffalo and Pittsburgh \* \* \*." The Commission's order applies "from (a) points on the lines of the New York Central Railroad Company and the Wabash Railway Company and their connections other than the Pennsylvania Railroad Company in Ohio, Indiana, and Illinois, and (b) the market points of St. Louis, Mo., and Chicago, East Louis, and Cairo, Ill., when originating beyond those market points, \* \* \*" (R. 42).



There was no evidence or other indication of record before the Commission that the proposed through routes were desired or would be used by anyone, shipper or consignee, for the *through movement* of shipments of grain, grain products, or by-products from point of origin or market point in the midwest to final destination, as distinguished from shipments of complainant which are stopped at Hagerstown for milling or mixing in transit.

For many years the authority of the Commission to prescribe through routes and joint rates deemed by it to be "necessary or desirable in the public interest" has been limited by the so-called short-haul rule which prohibits the Commission from requiring a railroad to participate in a through route which would "short-haul" it without its consent.\*

\*The proposed through routes (prescribed in the order involved) would short-haul one or more of the defendant railroads (appellants herein) without their consent. Thus, the proposed routes would employ the lines of the Pennsylvania only east of York, Pa., and Fulton Junction (Baltimore), Md., as compared with its present routes which give it much longer hauls (R. 34). Similarly on traffic from East St. Louis, Ill., to Milford, N. J., moving over route 2, the Wabash would obtain a haul of but 437 miles from East St. Louis to Toledo, Ohio (Ex. 68, R. 468, Item 12, R. 351-358), as compared with its much longer haul from East St. Louis to Black Rock, N. Y., in connection with its present route with the Pennsylvania (Ex. 49, R. 432, 284, 338).

No railroad defendant before the Commission or appellant herein consented that the Commission might require it to participate in any new through routes which would short-haul it. Petition, par. XXIV (R. 15); ad-

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\* A through route is said to "short-haul" a participating railroad when its haul in connection with that through route is substantially less than the entire length of its system railroad "which lies between the termini" of the through route. See 49 U. S. C. Sec. 15 (4), the text of which appears in Appendix 3, *infra*, p. 4a.

mitted in answer of U. S., Par. 11 (R. 58), and I. C. C. par XVII (R. 48).

The application of the short-haul rule or limitation on the Commission's power to prescribe through routes is subject to certain exceptions set forth in paragraph (4) of Section 15. One of these, clause (b), the provision here particularly involved, was enacted as a part of the Transportation Act of 1940. See 54 Stat. 911-912, Sec. 10 (b). Under this exception the short-haul limitation on the Commission's power remains applicable

"unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient and more economic, transportation, \* \* \*."

The report of the Commission concluded that the routes sought were necessary and desirable in the public interest (R. 34), but in view of the non-consent of the Pennsylvania to be short-hauled stated that "The question of whether the Commission is precluded from prescribing the routes sought depends on whether those routes are needed in order to provide adequate and more efficient or adequate and more economic transportation" (R. 35).

Complainant did not question the adequacy, efficiency, or economy of the Pennsylvania's service over its direct routes, but only over its route via Hagerstown. As to the latter, it contended the routes sought would be more adequate, efficient, and economic *from the shippers' standpoint* (R. 36).

Based on evidence adduced by defendants to show that the present routes of the Pennsylvania are adequate, efficient, and economical, the Commission found (R. 36):

"It maintains scheduled fast trains that operate frequently over direct routes, that do not go through Hagerstown, from the rate-break points and origins on its line and from its junctions with other carriers

in central territory to the destinations here considered. Its main routes from the west are via Pittsburgh and its Enola yard, which is across the Susquehanna River from Harrisburg. Traffic moving north, south, and east from Harrisburg is classified at that yard. An average of 65 scheduled trains and in addition thereto extra sections of those trains, extra trains, and local trains move into and out of that yard each day. Grain handled by the Pennsylvania moving to and from Hagerstown moves through that yard. Three scheduled trains operate each way daily between Enola yard and Hagerstown, and additional sections and extra trains are used when needed. *There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations.*\*\* (Italics inserted.)

In each instance the distance from the mid-western point of origin or market point to the final destination over the direct route of the Pennsylvania was shown to be less than over either of the proposed new routes (R. 84). The proposed routes were somewhat shorter than those of the Pennsylvania via Hagerstown, but "the evidence introduced before the Commission by the carriers was uncontradicted to the effect that the prescribed new routes would substantially increase the number of participating carriers and the number of interchange services. For example, on traffic originating at points in Central Territory (including market points not served by

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\* While the Court below rejected the carriers' contention based on the foregoing finding—that, since the existing routes furnished adequate transportation, clause (b) did not become operative and the Commission's ultimate conclusion could not stand—it did so because of its interpretation of the law, and did not disturb the finding as such (R. 97-98).

the Pennsylvania), these routes would, generally speaking, substitute 4 or 5-line hauls for 2-line hauls via the Pennsylvania; and where the traffic did not originate on the New York Central or the Wabash, would, generally speaking, involve 5 or 6-line hauls" (R. 99).

The record also established that "the interchange expense incident to multiple-line hauls as compared with single-line hauls, is substantial. For example, via the direct route of the Pennsylvania from Chicago to Salisbury, there is no extra operating expense involved for inter-carrier interchange; whereas, under the prescribed new routes, the interchange expense is an important item, in one or more instances (depending upon the precise routing) aggregating nearly \$40.00 per assumed box car equipment of 33 tons of grain" (R. 99).

The defendant railroads also introduced exhibits comparing the costs of operation over the proposed routes and the existing routes of the Pennsylvania, both direct and via Hagerstown,\* for the purpose of evaluating their relative economy having consideration for their differences in distances and in the number of interchange services which the respective routes severally involved.† Although these relative cost comparisons were based generally upon a formula used by the Commission's Bureau of Statistics, and were uncontroverted on the record, the Commission's report contains no finding as to relative costs of operation over the proposed and existing routes, but disregarded the evidence on grounds which are believed to be insufficient, and which are discussed in the Argument, *infra*, p. 103.

\* Exhibits 68 and 69; R. 468-474, 351-358.

† For the pertinency of such evidence see the statement of Joseph B. Eastman, member of the Interstate Commerce Commission and Chairman of its Legislative Committee, when testifying on February 28, 1939, before a subcommittee of the Senate Committee on Interstate Commerce (76th Cong., 1st Sess.) on S. 1085, a bill to repeal the short-haul rule, pages 9-10, quoted *infra*, pp. 62-63.



Evidence adduced by the defendant Pennsylvania of difficult and burdensome operating conditions incident to interchange with the Western Maryland at York and Fulton Junction (R. 338-351) as bearing upon the question of the comparative efficiency of operation of the routes involved, was disregarded by the Commission on the ground that it is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines,\* that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points, and that "It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duties to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out-of-line" (R. 37-38). No issue under Section 3 (4) of the Act was raised by the complaint or at the hearing, nor was any notice given the parties that such issue would be tried, nor was such issue tried before the Commission. Petition, par. XIX (R. 12), answer of U. S. R. 6 (55-56).

The Commission stated its interpretation of clause (b) as meaning "adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint" (R. 40), and its ultimate finding included the following, substantially in the language of the statute:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation \* \* \*" (R. 41).

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\* See 49 U. S. C. 3 (4), Appendix 4 at page 6a, *infra*. Prior to its amendment and renumbering by the Transportation Act of 1940, this provision was paragraph (3) of Section 3.

As will subsequently appear,\* however, this ultimate finding is not supported by the necessary basic findings, viz., (a) that the existing through routes do not provide adequate transportation, and (b) that the physical transportation over the proposed routes can be performed more efficiently or more economically. The real ground of the Commission's conclusion rests on its findings that "the present route is not *as adequate and efficient* as the route sought, *so far as the shipper is concerned*, \* \* \*" and that "the proposed routes would be *more economical to the shipper* \* \* \*" in that it would save the charge of 4.5 cents per 100 pounds for the out-of-line or back-haul service of the Pennsylvania between Enola Yard (near Harrisburg), Pa., and Hagerstown (R. 40). (Italics inserted.)

The order of the Commission Division 2, of March 18, 1943, prescribing the through routes sought by complainant was made to become effective June 28, 1943, upon not less than 30 days' notice, but by interim and subsequent orders, issued from time to time, was modified so as to become effective on April 17, 1944, upon 15 days' notice (R. 477).

### **Proceedings Before the District Court.**

Following the Commission's denial on October 4, 1943 (R. 43), of defendants' petition for reargument and reconsideration (R. 126) of the report and order of the Commission, Division 2, of March 18, 1943, appellants herein on November 4, 1943, filed in the United States District Court for the District of Maryland their petition (R. 3) for an interlocutory and final injunction setting aside, annulling, and suspending the said order of the Commission.

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\* *V. infra*, p. 72.

No testimony was taken before the District Court, but the case was presented on the record of the proceedings before the Commission which was introduced in evidence (R. 76).

The District Court concluded that the exception embodied in clause (b) "must be interpreted to mean 'adequate, and more efficient and more economic, transportation' from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both the shipper and the carrier" (R. 94).

The Court below further concluded that the Commission applied clause (b) in a manner supported by substantial evidence, that such application violates no constitutional rights of the petitioning carriers, and that the petition must be dismissed (R. 102).

In so concluding the District Court further stated:

"In view of the nature of this case, the Interstate Commerce Commission having made findings of fact, and this Court finding substantial evidence to support the same, it is assumed that no further or other statement of the ultimate or evidentiary facts is required under Rule 52 of the Federal Rules of Civil Procedure beyond those stated in the opinion; and also that the conclusions of law herein need not be separately stated" (R. 102).

The District Court on March 22, 1944, entered its final decree (R. 102) that the Commission's order was within its statutory authority and was made upon substantial evidence and in accordance with applicable law and is in all respects valid and dismissing the complaint of petitioners (appellants) for want of equity.

Following the entry of the final decree, the petitioners made application to the District Court for a stay of the Commission's said order of March 18, 1943, pending appeal to this Court (R. 103). Upon the petitioners' undertaking "to waive, effective April 17, 1944, and pending disposition of appeal, the back-haul charge of The Pennsylvania Railroad Company on the traffic that under the Commission's said order would secure rates over the prescribed through routes not subject to back-haul charge", the District Court, by order dated March 22, 1944, stayed the operation and enforcement of the aforesaid order of the Commission pending the perfection and determination of this appeal (R. 108).

Appellants seek an order from this Court reversing the final decree of the Court below and setting aside the Commission's order on the grounds, (1) that the issue involved is the proper construction and meaning of clause (b) of Section 15 (4) of the Act, and that the interpretation given this clause by the Commission in its order, which was sustained by the Court below, is improper and constitutes error of law; and (2) that if said clause is given its proper and lawful construction, then the Commission's order is not supported by the necessary basic findings, viz., (a) that the existing through routes do not provide adequate transportation, and (b) that the performance of the transportation over the proposed routes can be accomplished more efficiently or more economically than over existing routes; and (3) that if said clause is given its proper and lawful construction, then the Commission's findings and order are without substantial support in the evidence but are contrary thereto.

NOTE:—To avoid needless repetition, such additional facts as are necessary to the Argument will be included therein with appropriate record references.



## **SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.**

The Court below made no findings of fact or conclusions of law separate from those contained in the Commission's report and its own opinion (R. 102). The Commission's report leaves in doubt just what findings it did make, particularly with respect to the elements which are prerequisite to the applicability of clause (b) of Sec. 15 (4) of the Act. Appellants' second and third points relate to the absence of findings to sustain the Commission's order and to the absence of evidence to sustain its findings.

These circumstances required appellants to make numerous assignments of error (R. 112-120), on all of which they necessarily rely, and which are more particularly specified in connection with each of the three points of the Argument.\* There are set forth below, however, the major assignments of error, arranged generally in the order in which they will subsequently require consideration in the Argument, viz.,

The District Court erred:

(3) In concluding, holding and decreeing that the said order of the Commission was within its statutory authority and was made upon substantial evidence and in accordance with applicable law, and is in all respects valid.

(16) In failing to conclude and hold that the Commission's order is based upon a mistake of law and is beyond its statutory power in that the Commission has therein and thereby required one or more railroads petitioners herein, without their consent, to participate in new through routes which short-haul them, without having found, as a prerequisite, that the existing through routes do not provide adequate transportation between the ter-

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\* *V. infra*, pp. 26, 72, 88.

mini thereof, and that the service of transportation between the termini can be performed more efficiently or more economically over the prescribed routes than over the existing routes.

(27) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that the ultimate finding on which it rests—that the prescribed through routes “are needed to provide adequate and more efficient and adequate and more economical transportation”—is predicated upon the erroneous assumption that clause (b) of Section 15 (4) of the Interstate Commerce Act empowers the Commission to require railroads petitioners herein, without their consent, to participate in new through routes which short-haul them, upon a mere showing that such routes will be more advantageous or will result in a lower rate to a transit operator situated between the termini of the through routes and without regard to whether such through routes will be more efficient or more economic of operation than existing through routes.

(6) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that the Commission's ultimate finding upon which it rests, while in the language of the statute is without support in and is contrary to the evidence and is not supported by necessary quasi-jurisdictional findings.

(12) In failing to find that the Commission found that existing through routes were adequate and provide adequate transportation, and in failing to conclude and hold that, as a consequence, the Commission was not empowered to prescribe the new through routes which it has ordered, and which short-haul one or more railroads petitioners herein without their consent.

(33) In that, having interpreted clause (b) of Section 15 (4) of the Act “to mean ‘adequate, and more efficient or more economic transportation’ from the shipper's as well as from the carrier's standpoint,” and as including

"also considerations of railroad operating efficiency and economy", it failed to conclude and hold that the Commission's order was arbitrary and without warrant in law by reason of the Commission's failure to make findings as to whether the through routes prescribed would be more efficient or more economic from a railroad operating standpoint.

(14) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that it rests upon a finding that the prescribed new through routes "are needed to provide adequate and more efficient and adequate and more economical transportation", although the uncontradicted evidence of record shows that the existing through routes provide adequate transportation and that the routes prescribed are less efficient and less economic of operation than the existing routes.

(22) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law in that the ultimate finding of greater efficiency and greater economy on which it rests is without support in the evidence and is directly contrary to the evidence which shows that to typical destinations the service over the prescribed routes would be slower, and transportation thereover less economic, than over the existing routes.

(36) In failing to conclude and hold that the Commission's order is arbitrary and without warrant in law, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it is predicated upon ultimate findings as to adequacy, efficiency, and economy of through routes which rest not upon the evidence but upon an erroneous finding, itself without evidence, that The Pennsylvania Railroad Company, one of the defendants and a petitioner herein, failed to perform its duty under Section 3 (4) of the Interstate Commerce Act to afford all reasonable, proper, and equal facilities for the interchange of traffic with the Western Maryland Railway, although no issue under that section

was presented or tried, and no notice was given of any such issue to be heard or determined.

(37) In failing to conclude and hold that the Commission's order is based upon a mistake of law in that in making the findings upon which it rests the Commission erroneously assumed that, in determining the relative efficiency and economy of proposed and existing routes, it might disregard evidence that the proposed routes involved the use of interchange points not consistent with efficient and economic operation on the ground that any such inefficient or uneconomic operation would constitute a failure on the part of the railroads involved to perform their duty under Section 3 (4) of the Act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines.

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### **THE QUESTIONS PRESENTED.**

The primary question presented for determination in this case is a novel one, and may be stated as follows:

1. Is clause (b) of Section 15(4) of the Interstate Commerce Act operative as an exception to the short-haul rule, which prohibits the Commission from establishing a through route which would short-haul a participating railroad without its consent, upon a mere showing that such new route would advantage an individual transit operator located between the points of origin and destination of the proposed through route, and who would use it not for the purpose of a continuous through shipment, but for the purpose of securing a reduced rate on shipments stopped and milled in transit, and without any findings by the Commission that the existing routes do not provide adequate transportation between the points of origin and destination and that the proposed routes can be operated more efficiently or more economically than the existing routes?



If the answer to the foregoing question is in the negative, then a determination of the following question becomes necessary:

2. Is the Commission's order supported by the necessary basic findings essential to support its ultimate finding, substantially in the language of clause (b), "that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation \* \* \*?"

If the answer to this second question is in the affirmative, then there is presented for determination the question:

3. Are the Commission's findings, on which its order depends, supported by substantial evidence?

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## **SUMMARY OF ARGUMENT.**

The Commission's authority to prescribe new through routes by railroad is contained in paragraphs (3) and (4) of Section 15 of the Interstate Commerce Act.\* Under paragraph (3) a finding that they are "necessary or desirable in the public interest" is requisite to their establishment, but paragraph (4) contains a prohibition against the Commission's requiring any non-consenting railroad to participate in a new through route which would afford it a shorter haul than an existing route. This prohibition—known as the short-haul rule—is subject to certain exceptions, on one of which—clause (b), enacted in 1940—the Commission relied in making the order involved. Under this exception the short-hauling limitation on the Commission's power to prescribe the new through routes ordered

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\* Appendix 3, *infra*, p. 4a.

—which would short-haul one or more appellant railroads without their consent—is here governing and prevents their establishment

“(b) unless the Commission finds that the through route to be established is needed in order to provide adequate, and more efficient or more economic, transportation: \* \* \*.”

The Commission stated its interpretation of clause (b) as meaning “adequate and more efficient and more economic from the public’s or shippers’ as well as the participating carriers’ standpoint” (R. 40), and made its ultimate finding substantially in the terms of the statute, thus:

“We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established \* \* \*” (R. 41).

In reality the Commission based this ultimate finding and its ensuing order upon findings that the new through routes would advantage an individual manufacturer of animal and poultry feed at Hagerstown, Md., intermediate between the points of origin and destination of the through routes, who would use them not for a continuous through movement of grain and its products from point of origin to destination, but to secure a lower ultimate rate or charge as applied to its combined inbound shipments of materials and its outbound shipments of feed, manufactured at Hagerstown under a transit arrangement.\* The Commission made no finding that the existing routes did not provide adequate transportation, but on the contrary found that “*There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to*

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\* Transit arrangements are described *supra*, p. 4.

*meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations"* (R. 36). (Italics inserted.)

Further, the Commission made no findings that performance of the transportation from points of origin to final destination could be accomplished by the railroads more efficiently or more economically over the proposed through routes than over the existing routes.

The argument of appellants, defendants in the case before the Commission, may be summarized as follows:

I. The Commission's order, which was erroneously sustained by the District Court, was based upon a mistake of law and, on the facts before it, is beyond its statutory power.

The nature of the interpretation of clause (b) upon which the Commission predicated its order, and which the District Court sustained, has been sufficiently indicated above. In short, it makes the advantage to an individual shipper or transit operator, particularly by way of a rate reduction, the test of the applicability of the clause to relieve from the short-hauling limitation, regardless of whether the result would ultimately be detrimental to the carriers and to the shipping public generally. That this interpretation is based upon a mistake of law is shown by a number of considerations, viz.,

(1) The plain meaning of the words used in clause (b) disallows such interpretation, and shows that the clause does not become operative as an exception to the short-hauling prohibition unless the Commission finds that the existing through routes do not furnish adequate transportation from and to the points of origin and destination thereof, and unless the transportation or carriage over the proposed through routes can be accomplished by the

railroads more efficiently or more economically than by use of the existing direct routes between such points.

(2) The definition of "transportation" in part I of the Interstate Commerce Act, which applies to railroads, shows that the term relates to the physical service of carriage and does not refer to the rates or charges to be paid for such transportation.

(3) To similar effect is the separation in the statement of the National Transportation Policy, as set forth in the preamble of the Interstate Commerce Act, of the reference to transportation and the reference to the charges therefor.

(4) The Commission's interpretation of clause (b), which makes the advantage of an individual shipper in securing a rate reduction the test of its applicability, would make the short-haul rule of no effect since in practically every case it could be shown that a new through route would yield a reduced rate to some individual shipper or transit operator—lower over the particular through route if not lower than over existing routes.

(5) The District Court's interpretation of clause (b) would accomplish the virtual repeal of the short-haul rule. Because of the holding in *New York Central Securities Corp. v. United States*, 287 U. S. 12, that the term "public interest . . ." has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency," the Court below concluded that clause (b) means when in the public interest, but this would be equivalent to saying that the Commission could establish through routes when in the public interest, but not if it would short-haul a non-consenting railroad, unless the through route were in the public interest!

(6) The Commission's interpretation, upheld by the District Court, imputes to Congress an intention at variance with its national transportation policy as recognized by this Court and as declared in the Transportation Act of 1940, in that it assumes that Congress would authorize



the establishment of through routes to secure a rate reduction to an individual manufacturer or shipper even though the result would be a less efficient or less economic carrier operation the burden of which would ultimately be borne by the shipping public generally.

(7) The inadmissibility of the Commission's interpretation, sustained by the Court below, is further shown by a consideration of the reasons urged in support of the short-haul rule at Congressional committee Hearings on bills seeking its repeal, and which reasons alone can explain the long-continued maintenance of the rule. These reasons show that the rule serves to protect and promote the public interest and that it is in harmony with the national transportation policy in that it tends to preserve efficient and economic operation and to discourage wasteful transportation.

(8) A particularly pertinent and significant proof that clause (b) refers to efficiency and economy of *carrier operation* and does *not* relate to the *rates charged*, is found in its legislative history. This discloses that the Senate and House committee Hearings on the bills which became the Transportation Act of 1940 contains specific reference to the separate Hearings on the Through Route bills, and that the latter Hearings plainly show that clause (b), which first appeared in the Conference Reports of the Transportation Act of 1940, had its origin in and purpose to delimit more definitely *what* through routes Congress regarded as in the public interest, and to set a more definite standard for the Commission's guidance, and that the standard contemplated by clause (b) related to *efficiency and economy of railroad operation*.

(9) In disregarding the fact that the existing direct routes furnished adequate transportation from and to the points of origin and destination and more efficient and more economic transportation than the proposed routes, and in comparing the latter only with the Pennsylvania's routes involving back-haul service to and from Hagers-

town, the District Court erred in that the comparisons contemplated by clause (b) are with the existing <sup>direct</sup> routes as indicated by the language of Section 15(4) and by decisions of this Court and the Commission.

II. The District Court erred in failing to hold that the Commission's order is not supported by essential and basic findings and in holding the contrary.

The Commission's ultimate finding in the language of the statute will not sustain its order where there is a lack of basic or essential findings.

The Commission's ultimate finding that the new routes are needed to provide adequate transportation is not supported by basic or essential findings, but is directly contrary to its finding that the present routes furnish adequate transportation.

The Commission's ultimate finding that the new routes are needed to provide more efficient transportation is not supported by any basic findings as to the relative efficiency of the prescribed and present direct routes, or that the prescribed routes would be more efficient of operation than the existing routes of the Pennsylvania via Hagerstown.

If the Commission's discussion of Section 3(4) is to be regarded as a finding that defendants have breached their duty thereunder to provide all reasonable, proper, and equal facilities for the interchange of traffic with connecting lines, then such finding is invalid as having been made without even the rudiments of a fair hearing. But even if valid as a finding under Section 3(4) it would not as a matter of law supply the lack of essential findings that the proposed routes could be operated more efficiently than the existing ones.

The Commission's ultimate findings that the prescribed routes are needed to provide more economic transportation is not supported by any basic or essential findings that transportation thereover can be performed more economically than over the existing routes.

III. The Commission's order, which the Court below erroneously sustained, is not supported by substantial evidence but is contrary thereto, and is accordingly contrary to law.

Evidence that the existing routes of the Pennsylvania, both direct and via Hagerstown, provide sufficiently frequent service to meet all reasonable demands and furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement to eastern destinations was uncontroverted on the record and the facts were specifically so found by the Commission. Accordingly the Commission's ultimate finding that the new routes are needed to provide adequate transportation cannot stand, and clause (b) was not operative to relieve the application of the short-hauling limitation, and the Commission was without power to make the order.

The Commission's ultimate finding as to the greater efficiency of the new routes is not supported by but is against the evidence. Thus, complainant presented no evidence as to the relative efficiency of operation of the present and proposed routes in their entirety, and if only the portions of the present and proposed routes east of Hagerstown are compared, there is no basis of record for a finding that the latter are more efficient.

The Commission erroneously refused to consider defendants' evidence of difficult operations incident to interchange at York and Fulton Junction based on its unjustified conclusion respecting Section 3(4).

The Commission's ultimate finding as to the greater economy of the new routes is not supported by but is contrary to the evidence that the prescribed routes substantially increase the number of participating carriers and the interchange expense, and is contrary to the carriers' cost evidence which showed that performance of transportation over the prescribed routes would be less economic than over the existing routes.

**ARGUMENT.****I. THE DISTRICT COURT ERRED IN HOLDING THAT THE ORDER OF THE COMMISSION WAS NOT BASED UPON A MISTAKE OF LAW AND WAS NOT BEYOND ITS STATUTORY POWER.\***

As this point will proceed to develop, the Commission's order in this case, which the District Court sustained, is based upon a mistake of law, viz., upon a misinterpretation of clause (b) of Sec. 15 (4) of the Interstate Commerce Act† as a result of which the Commission exceeded its lawful power by prescribing through routes which short-haul a non-consenting railroad in violation of the short-hauling prohibition contained in Sec. 15 (4).

If by reason of a mistake of law the Commission makes an order which in the particular case is beyond its statutory power, its order is invalid and may be set aside.

*Interstate Commerce Commission v. Union Pacific R. R.*, 222 U. S. 541, 547;

*Interstate Commerce Commission v. Louisville & Nashville R. R.*, 227 U. S. 88, 91-92;

*United States v. Missouri Pacific R. Co.*, 278 U. S. 269;

*Ann Arbor R. Co. v. United States*, 281 U. S. 658, 669.

**A. The Commission's Order Violates the Short-Haul Rule Unless Clause (b) Was Operative.**

The grant of authority to the Commission to prescribe through routes over the lines of carriers by railroad is contained in paragraphs (3) and (4) of Section 15 of the Interstate Commerce Act, 49 U. S. C. Sec. 15(3) and (4), 54 Stat. 911-912.‡ Paragraph (3) empowers the

\* This point is supported by Assignments of Error Nos. 1-5, 8-11, 15, 16, 18, 26-29, 31 and 34.

† Appendix 3, *infra*, p. 4a.

‡ The full text of these provisions appears in Appendix 3, *infra*, p. 4a.



Commission, after full hearing, to establish such through routes and joint rates as it deems to be "necessary or desirable in the public interest, \* \* \*." But this power is expressly limited by certain restrictions, one of which, the short-haul rule in paragraph (4), is here involved. This rule provides that the Commission shall not require any railroad, without its consent, to participate in a through route which would afford it a lesser haul than by the use of its system lines lying "between the termini of such proposed through route, \* \* \*." Admittedly the prescribed routes will short-haul one or more railroad appellants without their consent.\*

In making its order the Commission wholly based its asserted right to disregard the short-hauling prohibition upon the following exception contained in clause (b) as included by the amendment of 1940, under which the short-hauling prohibition is governing

"(b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: \* \* \*."

This is shown by the following statement from its report (R. 35):

"The question of whether the Commission is precluded from prescribing the routes sought depends on whether those routes are needed in order to provide adequate and more efficient or adequate and more economic transportation."

The validity of the Commission's order therefore depends upon whether the exception contained in clause (b) was operative in the circumstances so as to make the short-hauling prohibition inapplicable.

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\* *V. supra*, p. 7.

**B. The Commission's Interpretation of Clause (b), On Which Its Order Depends, and Which the District Court Sustained, Is In Error.**

The Commission stated its interpretation of clause (b) as meaning "adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint" (R. 40), and made its ultimate finding substantially in the language of the clause as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established. \* \* \*."

The District Court in sustaining the Commission's interpretation stated:

"To summarize our conclusions as to the precise character of the restriction which clause (b) of Section 15(4) of the Act imposes upon the Commission's power to order the establishment of new through routes which short-haul a railroad without its consent, we are of the opinion that the exception embodied in that clause must be interpreted to mean 'adequate, and more efficient or more economic, transportation' from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier" (R. 94).

*In actuality the Commission's order rests solely on findings that the prescribed through routes would be advantageous to a single company engaged in the manufacture of mixed feed at Hagerstown, which would use them not for continuous through movements from and to points*

of origin and destination, but as a means of obtaining a lower basis of rate or charge on its inbound shipments of materials and its outbound shipments of feed, manufactured at Hagerstown under a transit arrangement. This is shown by the paragraph which precedes the Commission's ultimate finding and which reads:

"That the present route is not as adequate and efficient as the routes sought, *so far as the shipper is concerned*, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula. The fact that the proposed routes would be more economical *to the shipper* is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard heretofore described" (R. 40). (Italics inserted.)

As more clearly indicating the character of the interpretation actually placed upon clause (b) by the Commission, it is necessary here to note that it made no finding that the existing routes do not furnish adequate transportation, or that the physical transportation or carriage from and to the respective points of origin and destination of the through routes could be performed by the railroads more efficiently or more economically than over the existing routes. On the contrary it expressly found that "*There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for move-*

ment over its direct routes or over its routes via Hagerstown to eastern destinations" (R. 36). (Italics inserted.)

For the reasons which will now be outlined, the interpretation of clause (b) adopted by the Commission and sustained by the District Court, is based upon a mistake of law, as a result of which the Commission prescribed through routes in violation of the short-hauling prohibition of Section 15 (4) of the Act.

1. THE COMMISSION'S CONSTRUCTION OF CLAUSE (b) AS SUSTAINED BY THE COURT BELOW IS CONTRARY TO THE PLAIN MEANING OF THE WORDS USED.

The obvious meaning of clause (b) is that it makes the short-hauling restriction inapplicable only where existing routes do not provide adequate transportation and where it is shown that the physical transportation over the proposed routes can be performed more efficiently or more economically than over the existing routes.

The word "transportation" plainly means physical carriage.

It will be noted that the word "adequate" is *not* employed in a *comparative sense*. So far as this element is concerned, clause (b) is not operative unless the proposed through route *is needed* in order to provide *adequate* transportation. This necessarily means that adequate transportation is not presently available via existing routes.

The words "efficient" and "economic" are not used without qualification, but *only* in a *comparative sense* as indicated by the use of the adjective "more". Necessarily the contemplated comparisons are with existing routes.

In summary the plain common sense of clause (b) is that the carrier's right not to be short-hauled should give way when, and only when, it appears that the existing routes do not provide adequate transportation and that the physical transportation can be performed over



the proposed routes more efficiently or more economically than over the existing routes. The natural significance of the expressions "more efficient" and "more economic" as here employed contemplates a showing that the transportation to be performed can be effectuated or accomplished more readily or more easily and with a lesser expenditure of energy or expense than by use of existing routes.

2. THE DEFINITION OF "TRANSPORTATION" IN THE ACT REFUTES THE COMMISSION'S INTERPRETATION WHICH THE DISTRICT COURT SUSTAINED.

The natural significance of the term "transportation" used in clause (b), as relating to physical carriage, finds confirmation in Sec. 1 (3) (a) of the Act, 49 U. S. C. 1 (3) (a), which provides:

"The term 'transportation' as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

This provision, which relates to physical instrumentalities and facilities of shipment or carriage and to physical services plainly indicates that the term "transportation" connotes *physical carriage as distinguished from the amount of the rates or charges for such carriage.*

3. THE CONGRESSIONAL DECLARATION OF THE NATIONAL TRANSPORTATION POLICY DISALLOWS THE COMMISSION'S INTERPRETATION OF CLAUSE (b) WHICH THE DISTRICT COURT ERRONEOUSLY SUSTAINED.

The interpretation which the Commission actually placed on clause (b), as applied in its decision, was that

this exception to the short-hauling rule might be invoked whenever a lesser rate would result to a transit operator in the territory intermediate between the points of origin and destination of the through routes, and regardless of whether existing routes furnished adequate transportation between their termini and regardless of whether the new routes could be operated more efficiently or more economically. Thus, the Commission did not prescribe the new routes because of any demand on the part of any one to use them for through transportation from origin to destination. On the contrary, the real purpose in requiring the through routes was to enable the mixed feed manufacturer at Hagerstown to secure a reduction in the rates or charges on its traffic to eastern destinations on the Pennsylvania Railroad. Based on the fiction of a through movement on which transit operations depend,\* complainant's prime objective was to obviate the necessity of paying a back-haul charge for an actual back-haul movement, viz., from Enola Yard to Hagerstown and return. This was expressly admitted by complainant's counsel (R. 30-31, 259), and was implicit in the Court's basing its stay order upon the waiver of the back-haul charge pending disposition of appeal (R. 107-108).

In view of the Commission's interpretation of clause (b) as permitting it to disregard the short-hauling restriction where the prescribed through routes would produce a lower rate or charge to the Hagerstown transit operator, it is significant to note that the national transportation policy, as declared by Congress in 1940, 54 Stat. 899, makes a clear distinction as between transportation itself and the charges to be paid therefor. That declaration of policy is as follows:

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\* See *Central R. Co. of New Jersey v. United States*, 257 U. S. 247, 254-255, where the Court at page 257 stated:

"Creosoting in transit, like other transit privileges, rests upon the fiction that the incoming and the outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination."

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; *to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers*; to encourage the establishment and maintenance of *reasonable charges* for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." (Italics inserted.)

The separation in the foregoing statement of the reference to service and *transportation* from the reference to the *charges* therefor shows that Congress regarded the two as being distinct and not identical, and that a distinction should be recognized between the physical character of the transportation to be rendered by the carriers and the amount of the charges to be paid therefor by the shipping public. The failure of the Commission and the District Court to observe this distinction apparently contributed to their erroneous construction of clause (b).

4. THE COMMISSION'S INTERPRETATION, UPHELD BY THE COURT BELOW, WOULD MAKE THE SHORT-HAULING PROHIBITION OF NO PRACTICAL EFFECT.

The prescription of new through routes is customarily attended, as here, by the prescription of joint rates which necessarily represent reductions under whatever basis of rates may have theretofore been applicable over the route. In fact in probably every case the prescription of through routes would provide some shipper or transit operator with a lower rate—lower over the particular route if not lower than over existing routes.

In this situation it can be appreciated that if this Court should sustain the interpretation adopted by the Commission and approved by the Court below, which in effect makes the advantage to an individual shipper the sole test of the applicability of clause (b), the short-hauling prohibition would be virtually read out of the Act, since some one would invariably obtain a lower rate over the particular route involved. Clearly this was not the result intended by Congress in incorporating clause (b) into Section 15(4).

5. THE DISTRICT COURT'S INTERPRETATION OF CLAUSE (b) WOULD ACCOMPLISH THE VIRTUAL REPEAL OF THE PROVISION AGAINST SHORT-HAULING.

In sustaining the Commission's interpretation that clause (b) is operative if a shipper would be advantaged by the proposed through routes, the District Court noted (R. 91) that in *New York Central Securities Corp. v. United States*, 287 U. S. 12, the Supreme Court had held that the term "public interest" as used in the consolidation section of the Interstate Commerce Act (49 U. S. C. Sec. 5) was not a concept without ascertainable criteria, "but has direct relation to adequacy of transportation service, to its essential conditions of economy and effi-



ciency, and to appropriate provisions and best use of transportation facilities, \* \* \*". The Court below then seems in effect to have reasoned that since the term "public interest" as so used has direct relation to adequacy of transportation service and to its essential conditions of economy and efficiency, the use of the expression "adequate, and more efficient or more economic, transportation" in clause (b) means *when in the public interest* (R. 91-92).

The Court's conclusion in this respect would appear to produce an absurd result. According to this interpretation the Commission is empowered by Sec. 15(3) to prescribe a through route when in the public interest, subject to the prohibition against short-hauling a non-consenting railroad, which prohibition is itself set aside if the prescription of the through route is found to be in the public interest!

Such a construction of clause (b) is clearly inadmissible, since it would impute to Congress an intention to make the short-haul rule of no effect. But this is precisely what Congress refused to do when its repeal was proposed.\*

It is a settled rule of statutory interpretation that a construction should be adopted which would give effect to the entire statute.† Since the interpretation adopted by the District Court would be equivalent to a repeal of the short-hauling prohibition it must be concluded that it cannot stand as against one that will allow all parts of the statute to have a reasonable and consistent effect.

For reasons to be discussed more fully in the next section of this point, it is submitted that had the Court below properly interpreted the decision of this Court in *New York Central Securities Corp. v. United States*, 287 U. S. 12, it would have concluded that since the proposed through routes would have short-hauled one or more non-consenting

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\* *V. infra*, p. 7, *et seq.*

† *Petition of Public Nat. Bank of New York*, 278 U. S. 101, 104.

railroads, there was no basis for an ultimate finding that their establishment would be in the public interest in the absence of valid findings that existing routes did not provide adequate transportation and that transportation over the proposed routes could be accomplished more efficiently or more economically from the standpoint of railroad operation.

In passing, however, it should be noted that the Court below was unsound in its premise that a through route could be in the public interest if the short-hauling limitation properly applied.

The grant and scope of the Commission's power to prescribe through routes are set forth in paragraphs (3) and (4) of Section 15 of the Act, and these paragraphs must necessarily be read together. While in delimiting that power Congress first set forth in paragraph (3) a general grant of authority to establish through routes when deemed by the Commission to be necessary or desirable in the public interest, and, subsequently in the same section and in paragraph (4) set forth certain restrictions on that power, the method employed should not obscure the fact that the several provisions simply represent the purpose of Congress to define the scope of the power conferred.

This can be illustrated by considering the three principal limitations on the Commission's power to prescribe through routes. The first of these is found in the second sentence of paragraph (3), and provides:

"The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character."

The second of these limitations is the short-haul rule in paragraph (4) to which reference has already been

made. The third limitation, which was enacted as a part of the Transportation Act of 1940, is also contained in paragraph (4) and reads as follows:

"No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs."

It is submitted that a consideration of these restrictions requires the conclusion that they are not to be considered as *bars* to the prescription of through routes that *are* in the public interest, but rather as *Congressional interpretations or guides* for the Commission's use in determining *what* through routes are in the "public interest."

6. THE COMMISSION'S INTERPRETATION, WHICH THE DISTRICT COURT ERRONEOUSLY UPHELD, IMPUTES TO CONGRESS AN INTENTION AT VARIANCE WITH ITS NATIONAL TRANSPORTATION POLICY.

In numerous cases the Supreme Court has had occasion to decide cases against the background of the national transportation policy as evidenced and expressed in the 1920 and 1940 amendments of the Interstate Commerce Act.\* Prior to 1920 the main emphasis of the Interstate Commerce Act had been upon correcting discriminations against the interests of individual shippers and localities. With the 1920 legislation there became evident a broader policy on the part of Congress which looked to the protection of the long-range interests of the public even though that might conflict with the temporary advantage of individual shippers.

For example, in *New York Central Securities Corp. v. United States*, 287 U. S. 12, 24-25, the Court stated:

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\*41 Stat. 456; 54 Stat. 898.

“Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service. This Court, in *New England Divisions Case*, 261 U. S. 184, 189, 190, adverted to that purpose, which was found to be expressed in unequivocal language; ‘to attain it, new rights, new obligations, new machinery, were created.’ The Court directed attention to various provisions having this effect, and to the criteria which the statute had established in referring to ‘the transportation needs of the public’, ‘the necessity of enlarging transportation facilities,’ and the measures which would ‘best promote the service in the interest of the public and the commerce of the people.’ *Id.* p. 189 note. See, also, *Texas & Pacific Rwy. Co. v. Gulf, Colorado & Santa Fe Rwy. Co.*, 270 U. S. 266, 277. The provisions now before us were among the additions made by Transportation Act, 1920, and the term ‘public interest’ as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, question to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred.” (Italics inserted.)

At page 23 of the same case, after stating that the authority to lease was sought in the view *inter alia* that it would make possible important economies in operation, the Court stated:

“The public interest is served by economy and efficiency in operation.”



In *State of Texas v. United States*, 292 U. S. 522, wherein was involved an order of the Interstate Commerce Commission approving a railroad consolidation which had "direct relation to economy and efficiency in interstate operation \* \* \*" (p. 532), the Court discussed at pages 530-531, the national transportation policy in the following review:

"These broadening provisions of the Emergency Railroad Transportation Act 1933 confirm and carry forward the purpose which led to the enactment of Transportation Act 1920 (Title 4, 41 Stat. 474 *et seq.* We found that Transportation Act 1920, introduced into the federal legislation a new railroad policy, seeking to insure an adequate transportation service. To attain that end, new rights, new obligations, new machinery, were created. [Citing cases.] *It is a primary aim of that policy to secure the avoidance of waste.* That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public. [Citing cases] The authority given to the Commission to authorize consolidations, purchases, leases, operating contracts, and acquisition of control, was given in aid of that policy. *New York Central Securities Corporation v. United States*, 287 U. S. 12, 24, 25, 53 S. Ct. 45, 48, 77 L. Ed. 138. The criterion to be applied by the Commission in the exercise of its authority to approve such transactions—a criterion reaffirmed by the amendments of Emergency Railroad Transportation Act 1933—is that of the controlling public interest. And that term as used in the statute is not a mere general reference to public welfare, but, as shown by the context and purpose of the act, 'has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities.' *New York Central Securities Corporation v. United States, supra*". (Italics inserted.)

To the same general effect is the decision of this Court in *United States v. Lowden*, 308 U. S. 225, where, in sustaining an order of the Interstate Commerce Commission, which included a condition respecting protection of labor in approving a proposed railroad consolidation, the Court stated at page 232:

“The proposed lease in its relation to the transfer or dismissal of employees and to an adequate and efficient transportation system, is not to be viewed as an isolated transaction or apart from the Commission’s plan for consolidation of the railroads. As a result of the enactment of the Transportation Act in 1920, *consolidation of the railroads of the country, in the interest of economy and efficiency, became an established national policy*, and the effective consolidation of the railroads in conformity to the provisions of the Act and to the plan of consolidation which the Commission was directed to prepare became a matter of public interest. The policy of consolidation is so intimately related to the maintenance of an adequate and efficient rail transportation system that the ‘public interest’ in the one cannot be dissociated from that in the other.” (Italics inserted.)

In *McLean Trucking Co. v. United States*, U. S. , 64 S. Ct. 370, 377, this Court had the following to say with respect to the Congressional policy toward transportation:

“The national transportation policy is the product of a long history of trial and error by Congress in attempting to regulate the nation’s transportation facilities beginning with the Interstate Commerce Act of 1887. For present purposes it is not necessary to trace the history of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives

embodied in those efforts. 'Theretofores, the effort of Congress had been directed mainly to the prevention of abuses; particularly those arising from excessive or discriminatory rates'; and emphasis on the preservation of free competition among carriers was part of that effort. The Act of 1920 added 'a new and important object to previous interstate commerce legislation.' It sought 'affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country.' *Dayton-Goose Creek R. R. v. United States*, 263 U. S. 456, 478; *Texas & P. R. R. v. Gulf C. & S. F. R. R.*, 270 U. S. 266, 277. And in administering it, the Commission was to be guided primarily by consideration for 'adequacy of transportation service, . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facilities . . .'. *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25."

After discussing the further statement of the national transportation policy as enunciated in 1940,\* and after referring to the altered emphasis in railroad legislation on achieving an *adequate, efficient, and economical* system of transportation, this Court at page 381 made the following statement which clearly shows that the efficiency and economy contemplated was efficiency and economy *in operation*:

"The Commission found, as has been noted, that the proposed consolidation would result in *improved transportation service, greater efficiency of operation and substantial operating economies*. The higher load factor on trucks, reduction in the number of trucks used and the mileage traversed would lead to *more efficient use of equipment and save motor fuel*. Termini-

\* Quoted *supra*, p. 33.

nal facilities would be consolidated and used more effectively, through movement of freight would reduce costs and in a multitude of other ways the stability and safety of the service rendered would be enhanced.\*" (Italics inserted.)

It must be apparent from the foregoing expositions of the national transportation policy that Congress has endeavored to protect the long-range and over-all interest of the public in obtaining adequate transportation service by the avoidance of wasteful practices and by encouraging efficiency and economy in operation, and that to this end it has made the general public interest paramount where the advantage of an individual shipper or carrier would be inconsistent therewith. In the light of this policy the intendment of clause (b) is clear. It is to provide an exception to the short-hauling restriction if transportation service over the existing routes is not adequate, and if the necessary transportation could be performed by the carriers more efficiently or more economically than over the existing routes.

As contrasted with this interpretation, which is consistent and logical in the light of the Congressional policy as to transportation, it should be noted that *the Commission's interpretation of clause (b), which was upheld by the District Court, assumes that the policy of the law places the advantage of a single shipper or transit operator above that of shippers and the public generally.* Thus, the Commission's interpretation takes no account whatsoever of the general effect from the public standpoint of what it requires in the interest of the transit operator at Hagerstown. If, for example, the substitution of the prescribed multiple-line routes, with their greater attendant interchange expense, for the single-line routes of the Penn-

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\*E. g., tracing shipments and settlement of claims would be facilitated, congestion at shipping platforms would be reduced, the average life of the equipment would be lengthened by scientific maintenance and safety programs on a large scale, vehicles would be shifted quickly to meet peak demands on certain routes, etc."



sylvania should involve greater carrier expenditure for the performance of the transportation between origin and destination, the public interest would be disadvantaged for the benefit of the Hagerstown operator.

Such a clash of interest on the part of the general public and the individual assumes greater significance when consideration is given to the *actual results* of the Commission's order. While prescribing through routes between midwest origins or market points to eastern destinations, the ultimate purpose or objective is not the provision of new routes for *through movement*. On the contrary, through movement is not contemplated. It is the intention of the Hagerstown miller to stop the shipments in transit at that point and to make new shipments of its outbound products. While for purposes of adjusting the ultimate rates a through movement is assumed as in the case of other transit operations, the bald fact is that what is contemplated under the order is that complainant will make separate shipments into and out of its plant. This it now does over existing routes. The practical difference is that over the prescribed routes the Hagerstown operator will receive a *lower rate* than presently applicable.

It would therefore appear that the order of the Commission is based on its erroneous assumption that it is authorized to prescribe through routes not for the purpose of affording through service, but only as a device to obtain a lower rate or charge for an individual transit operator in the intermediate territory.

7. THE COMMISSION'S INTERPRETATION OF CLAUSE (b) AS SUSTAINED BY THE DISTRICT COURT IS SHOWN TO BE ERRONEOUS BY THE REASONS FOR THE LONG-CONTINUED MAINTENANCE OF THE SHORT-HAUL RULE.

#### a. Statutory development of the short-haul rule.

The short-haul rule had its origin in the Mann-Elkins Act of June 18, 1910, 36 Stat. 539, 552.† The only

\* See footnote to p. 31, *supra*.

† Appendix 1, *infra*, p. 1a.

exception to the application of the short-haul restriction as then enacted related to instances where the protection of the long-haul would result in a "through route unreasonably long as compared with another practicable through route which could otherwise be established." These paragraphs were further amended and numbered (3) and (4) of Section 15 of the Interstate Commerce Act by the Transportation Act of 1920, 41 Stat. 456, 485-486.\* This amendment made two additional exceptions to the short-hauling prohibition, neither of which are here involved.

During the period before and after the 1920 amendments the Commission, with occasional exceptions,† construed the short-hauling provision as protective only of the originating carrier and of each subsequent carrier only after it had obtained possession of the traffic.‡

As amended in 1920, the short-hauling provision contained in Sec. 15(4) came before the Supreme Court for construction in *United States v. Missouri Pac. R. Co.*, 278 U. S. 269 (1929), known as the *Subiaco case*. That case involved an order, made by the Commission in connection with its report on further consideration in *Fort Smith, Subiaco & Rock Island R. R. Co. v. A. & V. Ry. Co.*, 107 I. C. C. 523 (1926); which required the establishment of through routes which short-hauled the destination carrier without its consent.§ Upon review the Supreme Court

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\* The text of these paragraphs as so amended is reproduced as Appendix 2, *infra*, p. 2a.

† See *Hayden Bros. Coal Corp. v. D. & S. L. R. Co.*, 39 I. C. C. 94 (1916); *Wilgus v. P. R. R. Co.*, 113 I. C. C. 617 (1926).

‡ See for example *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C. 621, 630 (1913); *Flory Milling Co. v. C. N. E. Ry. Co.*, 93 I. C. C. 129, 134 (1924); *Fort Smith, S. & R. I. R. R. Co. v. A. & V. Ry. Co.*, 107 I. C. C. 523 (1926); *Routing of Grain*, 147 I. C. C. 782, 784 (1928).

§ A sketch map of the routes involved in the *Subiaco case*, and which shows a striking parallelism to the instant situation, appears at Page 126 of the printed Hearings on S. 1261 (75th Cong., 2d and 3rd sess.) before a subcommittee of House Committee on Interstate and Foreign Commerce.

held that the protection against short-hauling was not limited by the language of the law to the originating carrier or to a subsequent carrier getting possession of the traffic, but that it operated as a restriction on the prescription by the Commission of through routes which would short-haul *any* of the participating carriers.

Although the Commission, in various of its annual reports to Congress, sought an amendment which would overcome the Supreme Court's interpretation of the short-hauling provision, and although various bills were introduced in Congress for the purpose, no change was made in Sec. 15(4) until the enactment of the Transportation Act of 1940. The amendments then made included the exception embraced in clause (b), which removed the short-hauling restriction where it was made to appear and the Commission found that "the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation".\*

**b. The short haul rule is grounded in considerations of the public interest and the national transportation policy.**

Subject to modifying exceptions enacted from time to time as necessary, Congress has maintained the short-hauling limitation on the Commission's power to prescribe through routes for a period of 34 years. In view of the Commission's repeated recommendations for the repeal of the short haul rule,† and the failure of enactment of the various bills directed to the accomplishment of that objective, the reasons presented to Congress at hearings on such bills as justification for the retention of the rule are of particular significance. These reasons are to be found

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\* The full text of paragraphs (3) and (4) of Sec. 15 is reproduced in Appendix 3, *infra*, p. 4a.

† See the annual reports of the Interstate Commerce Commission to Congress for the years 1929 (p. 79), 1930 (p. 79), 1931 (p. 84), 1932 (pp. 36-37, 103), 1936 (p. 108), and 1937 (p. 106).

almost exclusively in the testimony of railroad witnesses appearing before various Congressional committees at hearings on bills contemplating repeal of the short-haul rule.\*

The reasons advanced by the railroad officers before the committees of Congress in support of the retention of the short-haul rule—and which alone can explain the refusal of Congress to repeal it—find their ultimate justification and validity in considerations of the public interest and of the national transportation policy. These reasons naturally group themselves under the subjects of protecting the investments and originating expense of the initial lines and the investments of destination lines in terminal facilities, the avoidance of interchange expense incident to multiple-line hauls, the promotion of efficiency and economy in operation, and of the uneconomic results of the unnecessary injection of short lines into existing through routes. In the interest of brevity the general nature of the testimony of the railroad witnesses on these several subjects is here summarized, with references to the printed Hearings where their full statements are set forth, and certain of the more significant portions of those statements will for convenience be included in Appendix 5 at pages 7a-23a, *infra*.

(1) *Protection of investment of initial carrier.*

For the purpose of opening up new territory and of developing traffic, railroads have invested millions of

\* See Hearings before Senate Committee on Interstate Commerce (74th Cong., 2d Sess.) on S. 1636, March 10 and 11, 1936.

Hearing before Subcommittee of House Committee on Interstate and Foreign Commerce (74th Cong., 2d Sess.) on H. R. 5364, March 31 and April 1, 1936.

Hearings before Subcommittee of House Committee on Interstate and Foreign Commerce (75th Cong., 2d and 3d Sess.) on S. 1261, Dec. 16, 1937, and April 5-8, 1938.

Hearings before Subcommittee of Senate Committee on Interstate Commerce (76th Cong., 1st Sess.) on S. 1085, Feb. 28 and March 1, 1939.

Hearing before Subcommittee of House Committee on Interstate and Foreign Commerce (76th Cong., 1st Sess.) on H. R. 3400, April 18, 1939.



dollars in branch lines constructed or acquired to serve new agricultural developments, oil fields, coal and other mineral deposits, and lumber producing territory. These branch lines generally could not exist or be profitably operated as separate and independent railroads. In making the necessary outlay to provide such a branch or feeder line, a trunk line is ordinarily justified only on the assumption that it will be permitted to carry over its main lines the traffic which it has so developed, if its own routes are not unreasonably long. If there were no assurance that a trunk line would be allowed to haul the traffic so originated as near to destination as its lines might run, but on the contrary were forced to surrender it to a competitor after only a short haul, the effect would be to take away from all trunk lines the incentive to risk their capital in the development and service of new territories and to jeopardize their investments in branch and feeder lines. See excerpts from statements of Paul P. Hastings, President of the Atchison, Topeka & Santa Fe Railway system, F. R. Newman, Vice President, Great Northern Railway Company, and R. J. Doss, Traffic Manager, Atlantic Coast Line, at hearings on S. 1261, in Appendix 5, *infra*, pages 7a-10a, and references there given to statements of E. W. Soergel, Assistant Freight Traffic Manager of the Chicago, Milwaukee, St. Paul & Pacific Railroad, and D. R. Lincoln, Assistant to Chief Traffic Officer, Missouri Pacific Lines, at said hearings.

(2) *Protection of initial lines in the operating expense of originating traffic.*

Railroads that originate traffic, particularly of an agricultural or perishable character, which must be shipped within a limited season or period, commonly assemble empty cars in the origin territory in advance of the actual movement, frequently hauling them empty for long distances in order to take care of the business

promptly when offered for shipment. Occasionally it occurs that weather conditions will so affect a crop about ready to be harvested as to reduce substantially the number of cars to be shipped and to leave unused much of the empty equipment assembled for its anticipated movement. If a railroad originating this character of traffic had no assurance of being able to retain its long haul to or in the direction of its destination, it would lose much of the incentive to incur the expense necessary to protect its prompt movement, and as a result the service to the shipping public would correspondingly suffer. See excerpt from statement of D. R. Lincoln, Assistant to Chief Traffic Officer, Missouri Pacific Railway, at Hearings on S. 1085, Appendix 5, *infra*, pages 11a-12a.

(3) *Protection of investments of destination lines in terminal facilities.*

Trunk lines which terminate large amounts of freight have large sums invested in terminal facilities. Some of these relate to certain classes of traffic which require special attention, such as fruits and vegetables, ore docks at lake ports, and docks and marine facilities for interchange of traffic with water carriers at ocean ports. These investments have been made by the individual carriers in anticipation of obtaining a reasonable haul on the freight using such facilities. The value of such investments, or the incentive to make future investments in this type of property, would be seriously impaired if the carriers making them had no assurance of performing a substantial proportion of the line-haul service. See excerpts from statements of Harry Wilson, Vice President, Traffic Executive Association—Eastern Territory; R. O. Small, General Freight Agent, Chicago & North Western Railway; and F. R. Newman, Vice President, Great Northern Railway; at Hearings on S. 1261, Appendix 5, *infra*, pages 12a-14a.

(4) *Avoidance of interchange expense incident to multiple-line hauls.*

Economical operation of the railroads is in the interest of the public at large, which ultimately must bear the burden of supporting and maintaining the transportation system, and therefore the element of avoiding unnecessary interchange expense has been given special emphasis by railroad officers when appearing before Congressional committees in opposition to repeal of the short-haul rule. This is epitomized in the statement of E. W. Soergel, Assistant Freight Traffic Manager of the Chicago, Milwaukee, St. Paul & Pacific Railroad, at the Hearings on S. 1261:\*

*"The establishment of a joint route for traffic that a one-line route can handle without undue circuitry is an economic waste because joint traffic is more expensive to handle than is local traffic and the greater the number of carriers in a joint route, the greater the expense."* (Italics inserted.)

The Freight Traffic Report of the Federal Coordinator of Transportation, Joseph B. Eastman,—quoted at length by railroad witnesses at the Through Route bill Hearings—particularly stressed the desirability in the public interest of avoiding the expense of wasteful transportation resulting from the competitive efforts of carriers to deflect traffic from the direct routes. While recognizing that the competitive policy might seem in many cases actually vital to the interest of the individual lines, the report goes on to state:†

\* See Appendix 5, *infra*, p. 15a.

† See Freight Traffic Report, Federal Coordinator of Transportation, Section of Transportation Service, Vol. 1 (May, 1935) pages 77-78, quoted in statement of D. R. Lincoln at Hearings on S. 1261, Appendix 5, *infra*, pp. 16a-18a. For fuller quotations from the Coordinator's Report on this subject see Hearings S. 1261, pages 143-144 (also reported in Hearings on H. R. 3400, pp. 140-141).

"From the wider public standpoint, it would be cheaper to give a direct subsidy to protect those interests than it is to provide the subsidy indirectly plus the waste entailed." (Italics inserted.)

Specifically with respect to intercarrier operations the Coordinator's Report, in discussing the policy of wide open carrier routes states *inter alia* that "the policy leads to *wasteful methods of operation by increasing the number of points at which interchanges are made, by greatly increasing the number of interchanges themselves, and by discouraging through inter-carrier train operations.*"\* (Italics inserted.)

Immediately following this quoted portion of the Coordinator's Report is the following statement therein with respect to interchange cost:

"116. Cost. In 1932 there were over 50 million interchanges reported at an aggregate cost of 330 million dollars. *The cost per car interchange was \$10.78, and per intercarrier car originated \$30.85.*"† (Italics inserted.)

In concluding its discussion on the subject of intercarrier operations the said Coordinator's Report states:

"With direct routes available, grouped into definite channels, the shipper's interests will be advanced by great acceleration in overall speed which results from the movement in through intercarrier trains, and also by the *elimination of waste in operating expenses which in the end are borne by the shipper.*"‡ (Italics inserted.)

\* Freight Traffic Report, Federal Coordinator of Transportation, Vol. 1, p. 104, quoted in statement of D. R. Lincoln at Hearings on S. 1261, Appendix 5, *infra*, p. 17a.

† See Federal Coordinator's Freight Traffic Report, Vol. 1, p. 104, quoted in statement of Harry Wilson at Hearings on S. 1261, p. 143.

‡ Coordinator's Freight Traffic Report, Vol. 1, p. 105, quoted in statement of D. R. Lincoln at Hearings on S. 1261, Appendix 5, *infra*, pp. 17a-18a.



In addition to these and similar findings from the Coordinator's Report, there were before the committees of Congress which held Hearings on S. 1261 and H. R. 3400\* statements on the same subject and to the same general effect by railroad witnesses opposed to the repeal of the short-haul rule. See statements of D. R. Lincoln, Assistant to the Chief Traffic Officer, Missouri Pacific Lines, Harry Wilson, Vice Chairman, Traffic Executive Association, Eastern Territory, Paul P. Hastings, Vice President, Atchison, Topeka & Santa Fe Railway, E. W. Soergel, Assistant Freight Traffic Manager, Chicago, Milwaukee, St. Paul & Pacific Railroad, and R. J. Doss, Freight Traffic Manager, Atlantic Coast Line Railroad, at the Hearings on S. 1261, excerpts from which appear in Appendix 5, *infra*, pp. 14a-19a.

(5) *Promotion of efficiency and economy in operation.*

Throughout the statements of the railroad witnesses who appeared at the various Congressional hearings in support of the retention of the short-haul rule and in opposition to its elimination will be found repeated references to the fact that its underlying justification is that it tends to *promote efficiency and economy in operation*, and to discourage the establishment of routes which would involve the accrual of greater expense ultimately to be borne by the public for the accomplishment of the same essential ultimate transportation service. Typical of these is the statement of Mr. L. T. Wilcox, Assistant Traffic Manager of the Union Pacific Railroad, at page 107 of the printed Hearings in S. 1261, that "the more the movement of traffic can be confined to single-line hauls, the more efficient and more economical can the service be accomplished, thereby giving the *shipping public as a whole* the benefit of the *efficient operation of the railroads.*"†

\* The Hearings in S. 1261 were incorporated in the Hearings on H. R. 3400.

† Also reported in Hearings on H. R. 3400, p. 104.

(Italics inserted.) Statements to the same general effect made at the Hearings on S. 1261 (which were also incorporated in the Hearings on H. R. 3400) are reproduced in Appendix 5, *infra*, pp. 19a-21a.

(6) *Unnecessary injection of short lines in through routes.*

Several of the railroad witnesses appearing before Congressional committees in opposition to bills proposing repeal of the short-haul rule stressed the lack of economic justification for the prescription of through routes so as to embrace a short line railroad merely for the purpose of according it a share of the freight revenue, where the result must inevitably be an increase in the cost of operation and a reduction of the net revenue to the railroads. On this aspect of the subject see the statements of Vice President Hastings of the Santa Fe and Mr. Harry Wilson for Eastern lines at the Hearings on S. 1261, excerpts from which are included in Appendix 5, *infra*, p. 21a.

8. THE LEGISLATIVE HISTORY OF THE ENACTMENT OF CLAUSE (b) SHOWS THE COMMISSION'S INTERPRETATION, WHICH THE LOWER COURT UPHELD, TO BE ERRONEOUS.

As hereinabove set forth the interpretation for which appellants contend is in accordance with the obvious meaning of the words used and with the definition of the term "transportation" as used in the Act. It is consistent with and gives full effect to the other provisions of paragraphs (3) and (4) of Section 15 and conforms with the national transportation policy as recognized by this Court and as specifically declared by Congress in 1940. In view of this situation reference to the legislative history of clause (b) is appropriate to confirm the obvious import of the language used.

*United States v. Missouri Pac. R. Co.*, 278 U. S. 269, 278-279 and footnotes;

*Helvering v. Griffiths*, 318 U. S. 371, 378-383 and footnotes.

**a. The Hearings on the Bills that became the Transportation Act of 1940 make specific reference to the Hearings on the Through Route Bills.**

Clause (b) of Section 15(4) first appeared, in the same form as finally enacted, in the Conference Committee reports\* on S. 2009, which became the Transportation Act of 1940. S. 2009 as initially passed by the Senate (76th Cong. 1st Sess.) eliminated the short-hauling restriction from Sec. 15(4). In the House, S. 2009 was amended by striking out all following the enacting clause and by inserting the House version as an amendment. This amendment of S. 2009 made no change in Section 15(4), but allowed the short-hauling provision to remain in effect. While the conference reports contain a full statement of what is provided by the amendments to Section 15 (4), they do not attempt to set forth the reasons for the amendments.

If reference is made to the hearings conducted by the Senate Committee on Interstate Commerce on S. 2009†, and by the House Committee on Interstate and Foreign Commerce on the related bills,‡ which resulted in the Transportation Act of 1940, it will be found that they do not in themselves disclose the considerations that occasioned the amendment in clause (b). This was for the reason that the question of the repeal of the short-haul rule had been and then was the subject of separate hearings on certain through route bills,§ which hearings were specifically referred to in the Hearings on S. 2009 and

\* See H. R. Conference Report No. 2016 (to accompany S. 2009), 76th Cong., 3rd Sess., April 26, 1940, pages 10-11, 64-65, and H. R. Conference Report No. 2832 (to accompany S. 2009) 76th Cong., 3rd Sess., August 7, 1940, pages 15-16, 70-71.

† See Hearings on S. 1310, S. 1869, S. 2009, before Senate Committee on Interstate Commerce (76th Cong., 1st Sess.).

‡ See Hearings on H. R. 2531, and H. R. 4862 (76th Cong., 1st Sess.).

§ House Hearings on S. 1261 (75th Cong., 2d and 3d Sess.); Senate Hearings on S. 1085 (76th Cong., 1st Sess.); and House Hearings on H. R. 3400 (76th Cong., 1st Sess.).

related bills and were relied upon for the exposition of that subject.

Thus, at the Senate Hearings on S. 2009 *et al.*, out of which developed the Transportation Act of 1940, Witness J. M. Hood, President, American Short Line Railroad Association, asked that S. 2009 as introduced be amended to conform to *Senate Bill 1085* then pending, which proposed the repeal of the short-haul rule. As hearings on the latter had been completed and the printed Hearings thereon were available to the Committee, no further hearings on the subject were held in connection with S. 2009. This is shown by the following therefrom:\*

"The other amendment which we strongly urge has to do with section 27, on page 96 of the bill. This section undertakes to continue as the law of the land what is now paragraph 4 of section 15 of the Interstate Commerce Act, which is a limitation upon the right of the Interstate Commerce Commission to prescribe through routes and rates, and to require the continuation in the public interest of existing through routes and rates.

"The change in the law which we urge is that contained in *Senate bill 1085*, which is before a subcommittee of this committee, hearings having been completed, entitled '*Through Routes, S. 1085*'; and the hearings print bears the Government Printing Office identification number 132900.

"We urge that since S. 2009 is a codification of the existing Interstate Commerce Act, the bill S. 1085 be incorporated therein by an addition to paragraph 1. of Section 27, and a *deletion in paragraph 2*† both of which are well understood by the members of the subcommittee and by most members of the committee.

\* See hearings on S. 1310, S. 2016, S. 1869, S. 2009, before Senate Committee on Interstate Commerce (76th Cong., 1st Sess.) pp. 542, 547.

† This refers to the proposed deletion of the short-haul rule.



"SENATOR REED:—However, I did not intend to hold another hearing or suggest that the full committee hold another hearing on *S. 1085*. I think it has been pretty well covered in the record made.

"MR. HOOD:—Yes, Senator. As was stated at the subcommittee hearing, there is substantially nothing that can be added to the record that was made in the previous hearing in the Seventy-Fifth Congress,\* which is available to you, and this record on *S. 1085*." (Italics inserted.)

The Senate Committee report† which accompanied *S. 2009* as passed by the Senate specifically refers to *S. 1085* as the basis for the proposed deletion of the short-haul rule. Thus, at page 21 thereof, in discussing Section 27 of the bill with respect to through routes and joint rates, the report states:

"The new matter inserted beginning in line 7, page 112, and the deleted matter on the same page, embody changes carried in the through routes bill, *S. 1085*, introduced by Senator Wheeler. In a number of annual reports, beginning with its forty-third, the Commission has recommended this change in the law, a change necessitated by a construction of the law by the Supreme Court."‡ (Italics inserted.)

When the corresponding bill in the House—the Omnibus Transportation Bill, H. R. 2531, 4862 (76th Cong., 1st Sess.)—came on for hearing before the House Committee on Interstate and Foreign Commerce in March, 1939, Mr. J. M. Hood, President of the American Short Line Railroad Association, in asking the repeal of the short-hauling restriction on the Commission's power to

\*The reference is to the House Committee Hearings on *S. 1261* (75th Cong., 1st Sess.).

†Senate Report No. 433, 76th Cong., 1st Session, to accompany *S. 2009*, dated May 16 (legislative day, May 8), 1939.

‡*United States v. Missouri Pacific R. Co.*, 278 U. S. 269.

prescribe through routes, made specific reference to the House Committee hearings on H. R. 3400 and S. 1261 as including all information needed by the committee for the disposition of this feature. Thus, he there stated:\*

"You will find in this blue pamphlet before you on page 1 that the association favors giving the Interstate Commerce Commission power to require the establishment and maintenance of through rail routes found by it to be necessary or desirable in the public interest.

"That is the subject of a bill pending before this committee, *H. R. 3400*, and it was the subject of very complete hearings before a subcommittee of this committee, during the Seventy-fifth Congress. The hearings are entitled '*Senate 1261*,' so that there is no further explanation needed by me." (Italics inserted.)

**b. The Hearings on the Through Route Bills clearly indicate that clause (b) relates to efficiency and economy of railroad operation.**

Reference to the hearings on S. 1085 and H. R. 3400† will show that those bills to eliminate the short-hauling provision, in addition to having the recommendation of the Interstate Commerce Commission, were mainly advocated by the short line railroads with some support from shippers and shippers' organizations. Both these groups

\* See printed Hearings, H. R. 2531, H. R. 4862; Vol. 2, p. 1353.

† When H. R. 3400 came on for hearing on April 18, 1939, before a subcommittee of the House Committee on Interstate and Foreign Commerce, the Chairman (p. 1) incorporated in the hearings thereon the printed Hearings on S. 1261 (75th Cong., 2d and 3d Sess.), an identical bill as respects Sec. 15 (4) on which House hearings had been held at the previous session, and the latter appear at pages 3-185 of the printed Hearings in H. R. 3400.

The form of the bill as passed by the Senate appears in Hearings on S. 1261 before subcommittee of House Committee on Interstate and Foreign Commerce, 75th Cong., 2d and 3d Sessions, p. 1. See also report No. 404 from the Senate Committee on Interstate Commerce, 75th Cong., 1st Sess. to accompany S. 1261, dated April 22, 1937.

were particularly interested in the maintenance of existing routes which they feared might be canceled if the short-haul rule remained in effect.\* Almost the only opposition to the bills was presented by the principal trunk line railroads which urged the retention of the short-haul rule.

The general grounds of the railroad opposition to the repeal of the rule have been noted above.† Basically all of those objections depend for their persuasiveness upon the fact that they are in line with the *ultimate interest of the public in providing adequate transportation with the utmost of efficiency and economy in operation*. This is shown in the following portion of the summation made in the statement of R. S. Outlaw, who appeared in the hearings on S. 1085 for all the main trunk lines in the West, the East, and the South that were opposing repeal of the short-haul rule. At page 62 of those hearings he stated in part:

“The proponents of these bills are asking that the Commission be given power to prescribe additional through routes where direct, adequate, and satisfactory routes already exist, in spite of the fact that the new routes *would not be more efficient* or more satisfactory routes, would not be of material advantage to the shipping public, but would generally prove *more expensive* and less desirable to operate.

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“The primary objective of the bill is to enable the Commission, where its sympathies may be enlisted, to require additional through routes which are

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\* See statements of:

J. M. Hood, President, American Short Line Railroad Association, Hearings S. 1261, p. 10 (also reported Hearings H. R. 3400, p. 12);

Charles R. Seal, Acting Chairman, National Industrial Traffic League, Hearings S. 1261, pp. 39-40 (also reported Hearings H. R. 3400, pp. 39-40);

Joseph B. Eastman, Member of the Interstate Commerce Commission and Chairman of its Legislative Committee, Hearings S. 1085, p. 7.

† *V. supra*, pp. 45-52.

longer, *more expensive to operate, or made up of a greater number of railroads than existing through routes.*

"Clearly, therefore, the proposal is nothing less than a demand for *wasteful transportation* just at a time when all possible waste should be avoided." (Italics inserted.)

One further feature of the background of the 1940 amendments to Section 15(4) deserves to be noted at this point. Throughout the various hearings on the bills which proposed to repeal the short-haul rule\* there was a repeated request on the part of spokesmen for the trunk line railroads of the country that the Congress should provide some more definite guide for the Commission's determination of what routes should be found by it to be necessary or desirable in the "public interest". This feature was the subject of concern on the part of the committees considering those bills. For example, in answer to questions by Congressman Huddleston, Mr. J. Carter Fort, who appeared for the Association of American Railroads in opposition to H. R. 5364 (74th Cong., 2nd Sess.), stated at pages 70-71 of the printed Hearings as follows:

"MR. HUDDLESTON:—Mr. Miller stated yesterday that this bill would permit the Commission on a finding of 'public interest' to require the originating carrier to turn freight over to a short line and that the public interest might be found to consist in the need of the short line for revenue. Do you agree with that interpretation?

"MR. FORT:—Mr. Huddleston, when you speak of the public interest, of course you have a criterion, if you call it a criterion at all, which is as broad as the guide or criterion of Congress itself. What one person or one commissioner might regard as being in the

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\* See reference to these bills and the Hearings thereon at page 46, *supra*.



public interest I do not think anyone in the world could tell. But it is perfectly true that in the past, and in the *Subiaco case*, 107 I. C. C., the Interstate Commerce Commission held that the public interest referred to in this particular provision of the statute, enabled the Commission to establish a route for the sole purpose of transferring revenue to one railroad and taking it away from another line without regard to the necessity to the shipping public for the new route . . . .

. . . . .

“MR. HUDDLESTON:—In short, is that definition of public interest applicable to ‘public interest’ as used in this amendment?

“MR. FORT:—The Commission has so construed it. In other words, it is just as broad as all outdoors. The Commission has no real criterion at all. It is free to bind and loose as it sees fit; to take business away from a line or establish a route which would take business away from one line and give it to another, not because the public needs the new route, not at all; not because the other route is not as direct as any route could be, but simply because it wants to give the business to some short line. It could do that under its interpretation of the statute.”

At the later Hearings on S. 1261 (75th Cong., 2d and 3rd Sess.) pp. 93-94, before a subcommittee of the House Committee on Interstate and Foreign Commerce—which printed Hearings are embodied in the printed Hearings on H. R. 3400 (76th Cong., 1st Sess.) p. 92—Mr. L. T. Wilcox, Assistant Traffic Manager of the Union Pacific Railroad, in opposing the bills which would have repealed the short-hauling limitation, voiced the same conviction as to the indeterminate character of the term “public interest” in the following statement:

*"They would remove all restrictions on the power of the Commission to fix any joint through routes which it may consider as being in the public interest without any definition by the Congress as to what is the public interest in the premises, and without laying down any rules for the guidance of the Commission in determining what joint through routes will be in the public interest. In other words, the passage of either of these bills will result in a complete delegation to the Commission of legislative authority with respect to establishing such joint through routes as may seem to it desirable, without giving an originating carrier or an intermediate carrier any right under any circumstances to retain their long hauls. The Commission would be able to deprive an originating carrier, or an intermediate carrier after coming into possession of the traffic, of their long hauls although their routes may be shorter and the traffic can be handled more efficiently and economically than by competitive routes, based on a finding that this is in the public interest although the 'public interest' is not defined and such originating or intermediate carriers may be deprived of revenue which would be arbitrarily given to their competitors."* (Emphasis supplied.)

With this background the key to the origin and significance of clause (b) will be found in the following questions asked and answers of Joseph B. Eastman, member of the Interstate Commerce Commission and Chairman of its Legislative Committee, when appearing before the subcommittee of the Senate Committee on Interstate Commerce holding hearings on S. 1085 (pp. 8-10):\*

"SENATOR JOHNSON OF COLORADO:—I take it this whole matter involves the expense of transfer and switching charges. Will you say it does not cost the

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\*The emphasis in the quotations from the Hearings has been supplied throughout.

shipper anything and therefore he is not interested in it because the rate is the same? Certainly it costs the railroad something, and the shipper supports the railroad and therefore indirectly it does cost him something. He is very much interested in efficient service. *He is very much interested in low cost of transportation. While a railroad can operate in red for a while, yet eventually the cost will be on the shipper. So if there is an unreasonable cost by way of transfer and switching charges, the shipper will have to bear that expense in the end, will he not?*

“COMMISSIONER EASTMAN:—Yes.”

“SENATOR JOHNSON OF COLORADO:—If the Commission would arbitrarily designate routing would it not necessarily involve switching charges between one railroad and another?

“COMMISSIONER EASTMAN:—If you are going to assume that the Commission will act arbitrarily under this amendment, that might follow. As the law would stand, with this amendment, the Commission could only do it in this way: establish a through route if it was proved on the record that such route was necessary or desirable in the public interest. Now, if there were going to be a lot of transfer and switching charges involved in that route, it might well be that such proof could not be supplied. From our point of view we assume we are not going to act arbitrarily but only where there is necessary proof as to public interest.

“SENATOR JOHNSON OF COLORADO:—You will be the judge of public interest.

“COMMISSIONER EASTMAN:—Yes; and if you want to define it more definitely, of course we will be glad to have it defined. But I will say that in studying the question of public interest we would certainly take into consideration the expense over the proposed route.

"SENATOR JOHNSON OF COLORADO:—*The expense to the railroad.*

"COMMISSIONER EASTMAN:—*Yes; the expense to the railroad.*

"SENATOR BONE:—Would two or three switching and transfer charges be sufficient in amount to justify a railroad in avoiding them by carrying a shipment we will say 1,000 miles farther?

"COMMISSIONER EASTMAN:—No; not in my opinion. I do not think we would prescribe any such route as that; I mean, if a situation should arise in connection with routes which were comparable. \* \* \*

\* \* \* \* \*

"SENATOR JOHNSON OF COLORADO:—How does the Commission arrive at the difference between the cost, or as to the comparative cost of transferring and switching, and the regular movement over the regular routes? In other words, how many miles of direct haul would equal the transfer charge between two railroads? *The transfer charge as I understand it is something in the neighborhood of, we will say, from \$5 to \$15 per car. How many miles could a railroad haul a car over their own line that would be equal to a transfer charge?*

"COMMISSIONER EASTMAN:—Well, I would not venture to say as to that.

"SENATOR JOHNSON OF COLORADO:—How, then, could you determine public interest?

"COMMISSIONER EASTMAN:—*I assume that all such information as that would be put on the record by anyone opposing a route and regarding it as unnecessary and undesirable in the public interest. You are now asking me to answer an abstract question, without any record before me to show how much the line haul is that would be equivalent to such a transfer or switching charge. I cannot answer that question offhand.*



"SENATOR JOHNSON OF COLORADO:—*You will take that into consideration in arriving at a conclusion as to public interest?*

"COMMISSIONER EASTMAN:—Yes.

"SENATOR REED:—Perhaps it might help Senator Johnson some if I made the suggestion that in comparing line-haul costs with transfer charges one were to assume, and it is purely an assumption and I do not mean to say it is accurate because it varies in different circumstances, but let us say that 4 mills per gross ton-mile is the cost of handling traffic on a railroad. With that assumption before you, you could determine the additional mileage that a shipment could be hauled to offset the 5 or 7 or 8 or 10 or whatever number of dollars might be involved in a transfer at an interchange point.

"COMMISSIONER EASTMAN:—Oh, certainly such computations can be made.

"SENATOR REED:—I am trying to get that point before Senator Johnson. He and I are both farmers, but I have been pitchforked into a little experience with this question, and I thought perhaps my question might help a little bit to clarify the situation. That is a way by which you could make a computation, I mean by making certain assumptions, and they are assumptions.

"COMMISSIONER EASTMAN:—I do not intend to deny that at all. In event a question of that kind came up under this proposed amendment, *the railroads who might oppose the establishment of such through routes, are entirely competent to present such computations on the record.* Furthermore, if the Commission should go so far as to act arbitrarily, that would become an error of law which can be corrected by the Supreme Court. The Supreme Court can act if we act arbitrarily, without substantial evidence to support our conclusions.

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Then at page 13 of the same hearings appears the question of Senator Reed and the answer of Commissioner Eastman that undoubtedly explains the origin and basis of the provision contained in clause (b). These were as follows:

“SENATOR REED:—Yes; now, Mr. Eastman, may I ask you this question, because I am trying to get at the broadest possible scope of this thing, looking at the railroad situation as a whole and not with respect to any individual line. *Would you think it would be pertinent or advisable to add a further proviso, that the Commission should not approve any route, even one published by the carriers, that was not reasonably efficient and economical?*”

“COMMISSIONER EASTMAN:—*I personally would not have any objection to that.*” (Italics inserted.)

In confirmation of this conclusion is the following additional statement by Senator Reed at pages 15-16:

“SENATOR REED:—As a member of this committee, I should like to do something constructive with this, in addition to giving the Commission whatever power is reasonably desirable. I wonder whether it would be constructive if we *added a proviso* there—and I would rather trust Commissioner Eastman’s language than my own; but just trying to embody the thought I had, that, in approving tariffs of carriers, the Commission *should not approve any route that was not economical or that resulted in additional costs that would be considered as wasteful competition, or words to that effect.*” (Italics inserted.)

In further confirmation as to the origin and purpose of clause (b) the following appears in the printed Hearings on S. 1085 at page 21:

“SENATOR REED:—Mr. Eastman, just following out that thought I had, and which has been expressed

in the record: Could you formulate a further provision that we could add to this proposed change in this paragraph, that *would be of any help to the Commission in determining the public interest* in these questions, and that would administratively be of any aid to you?

“COMMISSIONER EASTMAN:—Well, it could be done. You, yourself, suggested certain language which seems to me to be apt.

“SENATOR REED:—Well, I regard you as a master of the subject. I wonder if you would be willing, upon request of the committee—to beg the pardon of the chairman—I am just trying to see if we could get a suggestion from Mr. Eastman along the lines that we are discussing, that might be helpful in the public interest; that is all.

“COMMISSIONER EASTMAN:—Well, any amendment of this bill would simply have the effect of defining the public interest with respect to the ordering of through routes by the Commission.

“SENATOR REED:—That is right.” (Italics inserted.)

The correctness of this conclusion as to the origin and purpose of clause (b) gains support from the fact that Senator Reed was one of the representatives of the Senate on the Conference Committee on S. 2009 which framed the amendments of the through route provision including clause (b) of Section 15 (4).\*

In the light of the foregoing it must be apparent that the Conference Committee in proposing, and the Congress in enacting, clause (b), as well as the new provision in the same paragraph against prescribing routes for the

\* See Conference Report No. 2016 dated April 26, 1940, to accompany S. 2009 as presented by Mr. Lea, to the House of Representatives (76th Cong., 3d Sess.), p. 57, and Conference Report No. 2832, dated August 7, 1940, to accompany S. 2009, presented by Mr. Lea to the House of Representatives (76th Cong., 3d Sess.), p. 62.

purpose of diverting revenue, were undertaking to provide more certain guides for the Commission's determination of what was "necessary or desirable in the public interest" and were furthering the national transportation policy which looks to the prevention of waste and to the securing of efficient and economic operation as a sound basis for the provision of adequate transportation for the public at the lowest rates consistent therewith.

With reference to the significant colloquy between Senator Reed and Commissioner Eastman above quoted one might paraphrase the statement of this Court, speaking through Mr. Justice Jackson in *Helvering v. Griffiths*, 318 U. S. 371, 378, as follows:

"The statements of members of Congress and of a responsible Commission official at the hearings are at variance with the present assertion of the Government that Congress intended clause (b) virtually to repeal the short-haul provision."\*

Since the natural purport of clause (b) obtains significant confirmation when reference is made to its legislative history, and since the occasion for the amendment cannot otherwise be reasonably explained, the conclusions of the Second Circuit Court of Appeals speaking through Circuit Judge Learned Hand in *Securities & Exchange Com'n v. Robert Collier & Co.*, 76 F. (2d) 939, 941, become particularly apposite:

\* The original statement of this Court reads:

"The statements of members of Congress and of responsible Treasury officials at the hearings and debates on the Act are at variance with the present assertion of the Government that Congress intended Section 115 (f) (1) to challenge or override the decision to which it had in other sections of the Act accommodated itself."

It should be noted that the decision cited does not limit the Court to referring to statements of official witnesses before Congressional committees. Thus, there is extended reference in the footnote beginning at pages 377 and 390 of that decision to statements of a Witness Alvord who represented the Chamber of Commerce of the United States, an entirely unofficial organization.



“Finally, it is said that we should not regard the testimony of a witness before the committees; that it is not even as relevant as speeches on the floor of either house, which courts will not consider at all [Citing cases]. It would indeed be absurd to suppose that the testimony of a witness by itself could be used to interpret an act of Congress; we are not so using it. The bill was changed in a most significant way; we are concerned to learn why this was done; we find that it can most readily be explained, and indeed cannot naturally be explained on any other assumption than by supposing that the committees assented to a request from the very agency to whom the new functions were to be committed. To close our eyes to this patent and compelling argument would be the last measure of arid formalism. The amendments of a bill in committee are fertile sources of interpretation. *Pennsylvania R. Co. v. International Coal Co.*, 230 U. S. 184, 198, 199, 33 S. Ct. 893, 57 L. Ed. 1446, Ann. Cas. 1915A, 315. It is of course true that members who vote upon a bill do not all know, probably very few of them know, what has taken place in committee. On the most rigid theory possibly we ought to assume that they accept the words just as the words read, without any background of amendment or other evidence as to their meaning. But courts have come to treat the facts more really; they recognize that while members deliberately express their personal position upon the general purposes of the legislation, as to the details of its articulation they accept the work of the committees; so much they delegate because legislation could not go on in any other way.”

The legislative history of the enactment of clause (b) furnishes cogent evidence that Congress did not empower the Commission to find in the public interest or to prescribe new through routes which would short-haul a non-

consenting railroad unless the Commission finds that the existing routes from point of origin to ultimate destination do not furnish adequate transportation between such points and that the proposed routes can be operated more efficiently or more economically than the existing routes.

For all the reasons above indicated, petitioners submit that the Commission's order rests upon a mistake of law with respect to its authority to prescribe through routes and that as a consequence the order is beyond the Commission's lawful power.

9. THE COMPARISONS CONTEMPLATED BY CLAUSE (b) ARE WITH THE EXISTING DIRECT ROUTES, AND THE DISTRICT COURT ERRED IN FAILING SO TO HOLD.

The short-hauling limitation, of which the exception in clause (b) is a part, relates to through routes between the points of origin and destination of the joint rates that are applicable thereover. This is implicit in the authority given the Commission by Sec. 15(3) to establish through routes and joint rates. The language of Sec. 15(4) is specific in providing that the Commission shall not "require any carrier by railroad, without its consent, to embrace in any such route substantially less than the entire length of its railroad \* \* \*, which lies *between the termini* of such proposed through route, \* \* \*." (Italics inserted.) The same conclusion is supported by the Commission's practice thereunder. Thus, in the instant case through routes are prescribed from points of origin in Central territory and from certain market points therein to certain eastern destinations from and to which points joint rates now obtain. Accordingly, the short haul limitation deals with routes between such points of origin and destination without regard to the interest of railroads or transit operators in the intermediate territory which might seek the establishment of new through routes to include their lines or to pass through particular intermediate points.

This conclusion finds direct support in the decision in *United States v. Missouri Pac. R. Co.*, 278 U. S. 269 (1929), which held as beyond the statutory power of the Commission an order requiring the inclusion in a new through route of an intermediate railroad which served neither the origin or destination of the rates which applied over the existing through routes.

The same point was expressly held by the Commission in its report on further hearing in *Stickell & Sons v. Western M. Ry. Co.*, 153 I. C. C. 759, 761, called the first *Stickell case*, where it stated:

"In this connection complainant seems to be of the opinion that the question is whether the proposed through routes would short haul the objecting defendants in comparison with other routes which exist or could be constructed *through Hagerstown*. This, however, is clearly not the question, for there is no express requirement of law that routes must pass through particular intermediate points, and neither the short-hauling limitation nor any other provision can be read as implying any such requirement."

Appellants made the foregoing contention before the District Court. That Court disallowed the contention in the following holding (R. 97-98):

"This argument, we believe, is without merit. It is based upon the false premise that the short-hauling limitation in Section 15 (4) of the Act cannot be subject to *any* exception by virtue of clause (b) as long as there is *any* through route between the given termini which is satisfactory to other shippers; in other words, that there is no authority for ordering a through route to pass through any particular intermediate point. While, of course, it is true, there is no express requirement of law that routes *must* pass through particular intermediate points, and neither

the short-hauling provisions nor any other provision of the Act can be read as implying such requirement (*United States v. Missouri Pacific R. R. Co.*, and *Stickell & Sons v. Western Maryland Railway Co.*, *supra*), it is illogical to say that where a carrier, as is true in the present case, is already serving a shipper by one through route, such shipper may not be heard on the question, and have the Commission determine whether he is entitled to a different and more advantageous through route. Thus, when the Commission found (255 I. C. C. 340) 'that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations,' this is not to be taken as a finding which precluded the Commission from determining whether Stickell is getting, by reason of such routes, all the through route service that it is entitled to. In short, as we interpret the law, Stickell has the right to have its individual case considered from the point of view whether it is entitled to a route that is not *only* adequate, but *also* affords it 'more efficient'—that is better—or 'more economic'—that is, cheaper—transportation service."

It must be apparent from the language of the District Court that its rejection of appellants' contention on this point was the result of its erroneous conclusion that clause (b) was operative where the proposed routes would advantage the individual shipper or transit operator *without regard to whether such routes would be less efficient or less economic of operation from the railroad standpoint.*

Undoubtedly the prime purpose underlying the Commission's authorization to prescribe through routes is to facilitate through movement, *i. e.*, a continuous movement from origin to destination. As noted above\* it is illogical

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\* *V. supra*, p. 31.



to assume that the Congress intended to clothe the Commission with authority to prescribe new through routes for the *sole purpose of effecting a rate reduction as applied to two separate movements in and out of a transit point.*

But aside from this consideration, of necessity the standard of comparison would have to be the existing direct routes rather than such indirect routes as might be in effect. This is so because otherwise the purpose of requiring the comparison of the efficiency or the economy of the routes would fail of its purpose. If an indirect route were used as the standard, perchance a still more indirect route might be prescribed and so on *ad infinitum* to the complete disregard of the national transportation policy of fostering efficiency and economy of operation.

The error implicit in the failure of the Commission and of the Court below to regard the existing direct routes as the standard by which to compare those proposed more clearly appears if it be assumed that the Pennsylvania maintained no routes over its lines to and from Hagerstown subject to back-haul charge. Prior to May 5, 1921, there was no transit arrangement available to the Hagerstown manufacturer on traffic received and shipped over the Pennsylvania. On that date there was established, at complainant's request, the arrangement whereby it could receive and forward its shipments over the Pennsylvania on the basis of the rate over the direct routes plus a back-haul charge. I. C. C. Ex. 45 (R. 409, 410, 271-273, 338). If therefore the instant complaint had arisen before the establishment of the Pennsylvania route via Hagerstown, the only possible comparison of the proposed through routes would have been with the direct routes of the Pennsylvania to destination. This being so, it would be illogical to assume that the voluntary action of the Pennsylvania in establishing a through route via Hagerstown subject to back-haul charge should operate to establish a new and more lax standard against which to

compare the efficiency or the economy of the proposed routes. Indeed, the very fact that the Pennsylvania's routes via Hagerstown are subject to a back-haul charge would seem to make necessary that any comparison of the proposed routes, over which the same rate would be fixed as over the direct routes, should be only with the latter.

## II. THE DISTRICT COURT ERRED IN FAILING TO HOLD THAT THE COMMISSION'S ORDER IS NOT SUPPORTED BY ESSENTIAL AND BASIC FINDINGS AND IN HOLDING THE CONTRARY.\*

### A. The Commission's Ultimate Finding In the Language of the Statute Will Not Sustain Its Order Where There is a Lack of Basic Or Essential Findings.

The Commission made its ultimate finding substantially in the terms of the statute. Thus:

“We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, \* \* \*” (R. 41).

Nevertheless, the making of such finding will not sustain its order if there is a lack of basic or essential findings. Thus, in *State of Florida v. United States*, 282 U. S. 194, 215, this Court stated:

“[13] The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this court has recently adverted (*Beaumont, Sour Lake & Western Railway Co. v. United States*, decided November 24, 1930, 282 U. S. 74, 51 S. Ct. 1, 75 L. Ed. 221), but

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\* This Point is supported by Assignments of Error Nos. 6, 12, 13, 16, 17, 19, 25, 30, 32 and 33.

of the lack of the basic or essential findings required to support the Commission's order."

See also Justice Brandeis' concurring opinion in *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 74, where, in reviewing the types of cases wherein an administrative order may be set aside, he states:

"It may set aside an order for lack of findings necessary to support it, *Florida v. United States*, 282 U. S. 194, 212-215, \* \* \*."

In *Ann Arbor R. Co. v. United States*, 281 U. S. 658, 666, this Court reversed a decree dismissing a bill to set aside a Commission order wherein the Commission had found the rates involved "unreasonable", using the terms of the statute, although clearly predicating its determination of unreasonableness upon a misinterpretation of the Hoch-Smith Resolution, 49 U. S. C. Sec. 55, 43 Stat. 801. In the course of its opinion this Court stated:

"True, in both the original and supplemental opinions it is said that the existing rates are unreasonable, but the opinions taken as a whole show that this means the rates were deemed unreasonable under the joint resolution when construed as the Commission construed it, and not that they were deemed unreasonable under §1 (5) or §3 (1) of the Interstate Commerce Act. Throughout the opinions it is manifest that the Commission was testing the reasonableness and validity of the rates by considerations not applicable under those sections, but believed by it to have been brought into the problem by the resolution."

See also *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 488.

The dissenting opinion of Mr. Justice Frankfurter in *City of Yonkers v. United States*, U. S. , 64 S. Ct. 327, 332, contains some further elaboration of the nature of this point. Thus, he there states:

"But courts have also spoken of the need of findings as the basis of validity of an order by the Interstate Commerce Commission in the absence of a Congressional direction for findings. The requirement of findings in such a context is merely part of the need for courts to know what it is that the Commission has really determined in order that they may know what to review. 'We must know what a decision means before the duty becomes ours to say whether it is right or wrong.' See *United States v. Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 509-511.

"This is the real ground for the decisions which have found Interstate Commerce Commission orders wanting in necessary findings. They have all been cases where the determination of an issue is not open to independent judgment by this Court, and where the case as it came here rested on conflicting inferences of fact left unresolved by the Commission. Such were the circumstances, for instance, in *Florida v. United States*, 282 U. S. 194, particularly at 214-215, and *United States v. B. & O. R. Co.*, 293 U. S. 454, 455, particularly at 463-464. Findings in this sense is a way of describing the duty of the Commission to decide issues actually in controversy before it."

**B. The Commission's Ultimate Finding That the New Routes Are Needed to Provide Adequate Transportation Is Not Supported By Basic or Essential Findings, But Is Directly Contrary To Its Finding That the Present Routes Furnish Adequate Transportation, and the District Court Erred In Failing So to Hold.**

The Commission's ultimate finding includes the finding that "the two routes sought . . . are needed to



provide adequate \* \* \* transportation \* \* \*.” Yet its report contains basic findings to the contrary effect that the present routes furnish adequate transportation. Thus, the Commission, with respect to the contention of the Pennsylvania that its routes are adequate, efficient, and economical, made the following specific findings (R. 36):

“It maintains scheduled fast trains that operate frequently over direct routes, that do not go through Hagerstown, from the rate-break points and origins on its line and from its junctions with other carriers in central territory to the destinations here considered. Its main routes from the west are via Pittsburgh and its Enola yard, which is across the Susquehanna River from Harrisburg. Traffic moving north, south, and east from Harrisburg is classified at that yard. An average of 65 scheduled trains and in addition thereto extra sections of those train, extra trains, and local trains move into and out of that yard each day. Grain handled by the Pennsylvania moving to and from Hagerstown moves through that yard. Three scheduled trains operate each way daily between Enola yard and Hagerstown, and additional sections and extra trains are used when needed. *There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over its direct routes or over its routes via Hagerstown to eastern destinations.*” (Italics inserted.)

If, as contended by these appellants, the foregoing is a finding that the existing routes provide adequate transportation within the meaning of clause (b), then it neces-

sarily follows that the Commission's order is invalid for lack of findings necessary to invoke this exception to the prohibition of short-hauling.

The District Court rejected this same contention, but its opinion indicates that its conclusion in this respect was not predicated upon the view that the Commission's statements did not constitute findings by it, but was based upon its construction of the legal effect of clause (b) (R. 98). Thus, in referring to the portion of the finding italicized above it stated that

“this is not to be taken as a finding which precluded the Commission from determining whether Stickell is getting, by reason of such routes, all the through route service that it is entitled to. In short, as we interpret the law, Stickell has the right to have its individual case considered from the point of view whether it is entitled to a route that is not *only* adequate, but *also* affords it ‘more efficient’,—that is, better,—or ‘more economic’—that is cheaper,—transportation service.”

It is therefore apparent that the District Court, in rejecting the railroads' contention on this score acted solely upon its conclusion that clause (b) was operative if the new route would prove more advantageous to the shipper than existing routes regardless of whether it were less efficient or less economic of operation.

But if it be contended that the foregoing quotation from the Commission's report is not a basic or essential finding that existing routes provide adequate transportation, then by comparison it must be concluded that the Commission has made no basic or essential findings whatsoever to support its ultimate finding, since there is nothing in the form or content of the statements contained in the foregoing quotation from the Commission's report which make them in any way inferior as findings to those which the Court below regarded as such. See for example

the Commission's statement (R. 36) concerning complainant's contention that "the routes sought would be more adequate, efficient, and economic from the shippers' standpoint," in which it states that "on information received from the Western Maryland, complainant estimates that it would save 2 days in reaching destinations in the Del-Mar-Va peninsula if the routes sought were established." It will be noted that the Court below (R. 95), in summarizing the Commission's findings includes among them "Stickell's estimate that there would be saved 2 days in reaching these destination points over the new through routes, \* \* \*" (R. 95).

**C. The Commission's Ultimate Finding That the New Routes Are Needed to Provide More Efficient Transportation Is Not Supported By the Necessary Basic Or Essential Findings.**

While in actuality the Commission's order rests upon its conclusion that clause (b) makes the short-haul rule inoperative if the new routes would prove advantageous to the Hagerstown manufacturer, its report in terms seems to hold that the relative efficiency and economy of the present and proposed routes from a railroad operating standpoint are also to be taken into account. Thus, the Commission stated (R. 40):

"We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' *as well as the participating carriers' standpoint.*" (Italics inserted.)

That the Court below also concluded that clause (b) comprehended considerations of railroad operating efficiency and economy is indicated by the following from the summary of its views on this point (R. 94):

"\* \* \* we are of the opinion that the exception embodied in that clause must be interpreted to mean

'adequate, and more efficient or more economic, transportation' from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both shipper and the carrier."

In the light of the expressed conclusions of the Commission and of the lower Court, it would seem that there should have been findings made by the Commission concerning the relative efficiency and economy of the proposed and present routes. An examination, however, will disclose an entire absence of such findings. For the purpose of this analysis the subject of relative efficiency will first be considered, and, under the next division of this point,\* the subject of relative economy of operation.

1. THE COMMISSION'S REPORT CONTAINS NO BASIC FINDINGS AS TO THE RELATIVE EFFICIENCY OF THE PRESCRIBED AND PRESENT DIRECT ROUTES.

The Commission's report will be searched in vain for any basic findings that the prescribed routes are more efficient of operation than the existing direct routes of the Pennsylvania from points of origin to the destinations on its lines. That the Commission did not even undertake to make any such finding is shown by its statement (R. 36) that:

"Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown."

2. THE COMMISSION'S REPORT CONTAINS NO FINDINGS THAT THE PRESCRIBED ROUTES WOULD BE MORE EFFICIENT OF OPERATION THAN THE EXISTING ROUTES OF THE PENNSYLVANIA VIA HAGERSTOWN.

Assuming *arguendo* that the Pennsylvania's routes via Hagerstown, rather than its direct routes, furnish the

\* *V. infra*, p. 86.



standard for measuring the relative efficiency of the proposed routes, the conclusion is still inescapable that the Commission's report contains no such essential findings as are necessary to validate its order.

a. The Commission's reference to existing routes via the Western Maryland through Hagerstown to other eastern destinations are irrelevant.

The nearest approach to findings relating to the relative efficiency of the proposed routes is contained in the following quotation from the Commission's report (R. 36):

"Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shippers' standpoint. Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, on the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning, and on information received from the Western Maryland, complainant *estimates* that it would save 2 days in reaching destinations in the Del-Mar-Va peninsula if the routes sought were established. Its experience shows that it takes 1 day each way between Harrisburg and Hagerstown and 1 day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of 4 days required for the out-of-line service, and that it takes an average of 3 to 4 days for the movement of a car from its plant to destinations on the Del-Mar-Va peninsula." (Italics inserted.)

Under the following point there will be developed the absence of substantial evidence to support even the fore-

going indeterminate statements of the Commission,\* but for the instant purpose it will suffice to show that, taken at their face value, neither such findings nor others in the Commission's report on the subject of relative efficiency, will sustain its ultimate conclusion and order.

A comparison of the through routes contemplated by clause (b) is undoubtedly of the routes in their entire length from and to the points of origin and destination of the joint rates. This is evident from the language of Sec. 15 (4) which is specific in providing that the Commission shall not "require any railroad, without its consent, to embrace in any such route substantially less than the entire length of its railroad \* \* \*, which lies *between the termini* of such proposed through route, \* \* \*." (Italics inserted.) The same point was expressly held by the Commission in its report on further hearing in the first *Stickell case*, 153 I. C. C. 759, 761, where it stated:

"In this connection complainant seems to be of the opinion that the question is whether the proposed routes would short haul the objecting defendants in comparison with other routes which exist or could be constructed *through Hagerstown*. This, however, is clearly not the question, for there is no express requirement of law that routes must pass through particular intermediate points, and, neither the short-hauling limitation nor any other provision can be read as implying any such requirement."

Nevertheless, there is no finding by the Commission of the relative efficiency of the proposed and present routes via Hagerstown in their entirety. This is virtually conceded by the Court below in the following statement (R. 98):

"We may assume the correctness of the carriers' evidence that via the prescribed new routes the total

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\* *V. infra*, p. 89, *et seq.*

elapsed time for shipments to move from origin to destination points would, generally speaking, be longer than over the existing route. But this is not controlling, because what Stickell is most concerned with is prompt delivery of its *products*. As to them, there is no *through* movement except in the fictional sense. Of course, Stickell must count upon receiving its grain and grain products with reasonable promptness, so as to have on hand sufficient materials out of which to manufacture its products. But, practically speaking, the time taken for a carload of grain to reach the plant, would not control the time when a carload of the finished product would leave the plant. It is the movement from plant to customer that is really at issue."

Despite the conclusion of the Court below that it would be sufficient to compare the efficiency of the proposed and present routes only *from* Hagerstown, it must be obvious that this would not meet the requirements of clause (b). If a comparison of only the latter portions of the routes were considered, it might prove unrepresentative of a comparison of the routes as a whole.

The report of the Commission (R. 29-30) makes reference to the existence of numerous through routes from the origin territory involved via the Western Maryland through Hagerstown to destinations on the lines of numerous eastern railroads, not including the Baltimore & Ohio and the Pennsylvania railroads. With reference to these routes the Commission's report states (R. 39):

"As has already been shown, well established freight routes, including those here sought up to Hagerstown, are maintained at the joint through rates via Hagerstown to destinations on the Western Maryland and many of its connections east of Hagerstown. There is nothing to indicate and it is not even speci-

cally contended that the established joint through rates would not be reasonable over the sought routes to destinations on the Pennsylvania to the same extent that they are over the routes over which they apply to other destinations in eastern territory."

But even if regarded as a finding, this cannot serve to support the ultimate finding and order of the Commission for several reasons.

The through routes which now apply via the Western Maryland through Hagerstown to destinations on the lines of other eastern railroads (not including the Baltimore & Ohio or the Pennsylvania) operate, not through York or Fulton Junction, but through Shippensburg, Pa. As indicated on map Exhibit 66 (R. 465, 339, 358) Shippensburg is intermediate between Hagerstown and Harrisburg on the line of the Pennsylvania, and is also served by a paralleling line of the Reading Company which extends from Harrisburg. None of the routes in connection with the Western Maryland to these destinations operate through York or Fulton Junction.

It must therefore be apparent that findings with respect to the existing routes via the Western Maryland to such other destinations via Shippensburg, have no relevance to a comparison of the present routes with the prescribed routes to destinations on the Pennsylvania which would be operative via York or Fulton Junction. To employ the expression of Justice Brandeis in his summary of classes of cases wherein the order of an administrative tribunal may be set aside\* it would here appear that "facts and circumstances were considered which could not legally influence the conclusion, \* \* \*." But further than this, it is submitted that the concluding statement of the Commission, last above quoted, which relates to an absence of proof to the contrary, cannot serve affirma-

\* Concurring opinion of Justice Brandeis in *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 74-75.



tively to support its ultimate finding and order. Clause (b) does not become operative upon an absence of proof that the new routes would not be more efficient or more economic than existing routes, but only upon affirmative findings by the Commission, based on substantial evidence, that they will be more efficient or more economic.

**b. The reference in the Commission's report to rail-truck routes are irrelevant to the question of the relative efficiency of the present and prescribed routes.**

The penultimate paragraph of the Commission's report contains the following on the subject of relative efficiency (R. 40):

"That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula."

Aside from the fact that on its face it does not constitute or support a finding of the relative operating efficiency of the present and prescribed routes, but relates only to the desirability of the routes from the standpoint of the Hagerstown manufacturer, it must be obvious that the efficiency of the rail-truck route mentioned, even if it were known, would be irrelevant to the comparison of present and prescribed routes contemplated by clause (b). The rail portion of the rail-truck route passes over the line of the Western Maryland to Shippensburg, and over the line of the Reading Company beyond through Reading and Coatesville, Pa., to Elsinere Junction, near Wilmington, Del. This is a distinctly different route beyond Hagerstown from the routes prescribed via York and

**Fulton Junction.** Therefore whatever the efficiency of the rail-truck route might be, any finding with respect thereto would be wholly insufficient to satisfy the requirements of clause (b).

That the lower Court recognized the force of this argument is shown by its statement (R. 100):

“We believe it to be true, as the carriers contend, that, for the purposes of the precise issue now before us, little importance should be attached to the Commission’s finding that in order to meet the demands of customers for prompt delivery, Stickell shipped 640 cars of its products from Hagerstown over the Western Maryland and the Reading to Elsmere Junction (Delaware), thence by truck to destination points, because the comparison contemplated by clause (b) of Section 15 (4) must be as between the proposed routes and existing routes by *railroad*, and a comparison of a combination rail-motortruck service with all-rail service over either routes, is not contemplated.”

3. THE COMMISSION’S GRATUITOUS FINDING UNDER SECTION 3 (4) WILL NOT SUPPLY THE LACK OF ESSENTIAL FINDINGS THAT THE PROPOSED ROUTES CAN BE OPERATED MORE EFFICIENTLY THAN THE EXISTING ONES.

To show the operating difficulties attendant upon the use of York and Fulton Junction as points of interchange between the Western Maryland and the Pennsylvania on the traffic involved, the defendants adduced detailed evidence of the precise character of the operations.\* The Commission disregarded it as indicating a breach of duty by the Pennsylvania under Section 3 (4) of the Act to provide reasonable facilities for interchange of traffic, although no issue was presented or tried or notice of

\* (R. 338-351, Exs. 66-67, R. 465, 466, 358.)

hearing given with respect to such an issue. This violated the most elementary rules with respect to the requirements of a fair hearing in making such finding.\* But it is here important to note that even had there been ground for the Commission's making a finding under Section 3 (4) of the Interstate Commerce Act—to the effect that any difficulty of operation attendant upon interchange at York or Fulton Junction would indicate a failure “to afford all reasonable proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines”—such finding would not relieve the Commission from the necessity of making a finding as to the relative efficiency of the present and proposed routes in order to make operative the clause (b) exception to the short-haul rule. This is for the reason that clause (b) necessarily contemplates a comparison of existing and proposed routes *in their present state*. This must be so because, if existing interchange facilities could be made efficient only by whatever construction might be necessary to improve them, the outlay thereof would automatically become a factor in the relative economy of the existing and proposed routes. For example, the Commission regarded the evidence of difficult operating conditions incident to the interchange between the Western Maryland and the Pennsylvania at Baltimore as a showing that the Pennsylvania “has failed to perform its duty” to establish reasonable, proper, and equal facilities for the interchange of traffic with the Western Maryland (R. 37). As disclosed by the evidence, a very substantial, if not the most important, part of the operating difficulties which retard the transfer of freight from Western Maryland road trains to Pennsylvania road trains in the Baltimore area via Fulton Junction arise from the interference produced by fast passenger trains and through freight trains operating between Washington and points beyond Baltimore through the two Baltimore tunnels and the Baltimore Union Station area (R. 340-

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\* *Standard Oil Co. v. Missouri*, 224 U. S. 270, 281.

343, Ex. 67, R. 466, 358). If, therefore, it were the duty of the Pennsylvania to make whatsoever adjustment is necessary in its through train service, or in its physical facilities in the Baltimore area, such as by increasing the number of tunnels and supporting trackage, so that traffic received in interchange from the Western Maryland at Fulton Junction could more quickly be incorporated into road trains in the Bay View Yard north of Baltimore, the capital outlay to achieve that result would doubtless have an important bearing on the relative economy of that route as compared with the existing route of the Pennsylvania through Enola Yard.

**D. The Commission's Ultimate Finding That The Prescribed Routes Are Needed To Provide More Economic Transportation Is Not Supported By the Necessary Basic or Essential Findings.**

For the reasons above discussed with respect to relative efficiency\* it is essential to the validity of the Commission's order that it be supported by findings that the routes prescribed can be operated more economically than the existing routes. No such finding has been made.

In passing it should be noted that there is nothing in clause (b) to suggest that it casts any burden upon the defendant railroads to establish a negative, failing which the clause would become operative. On the contrary, the burden to show the greater economy of the proposed routes necessarily rests upon him who invokes clause (b). This would not place any unusual burden upon a shipper since it would have access to the reports of the carriers to the Commission and could make computations of the same general sort as were introduced by the defendant railroads before the Commission (Ex. 68, 69, R. 467-474, 358). See in this connection the statement of Commissioner Eastman at page 10 of the printed Hearings in

\* *V. supra*, p. 77, *et seq.*



H. R. 3400, quoted above,\* with respect to the presentation of such computations on the question of relative economy of operation.

The Commission's report contains the following finding with respect to the relative distances over present and proposed routes (R. 34):

"Both parties use Chicago as a representative origin and Salisbury, Md., as a representative destination, and the places will be so used here. The distance over the short tariff route of the Pennsylvania between those points is 902 miles. \* \* \* The distance over route 1 via Fulton Junction is 946 miles and via York 958 miles, and over route 2 via Fulton Junction 938 miles and via York 950 miles."

But even if comparison be made with the Pennsylvania's route via Hagerstown, which would add 149 miles to produce a total of 1,051 miles, there will be found nothing in the report by which to appraise or determine the relative effect, from the standpoint of economical operation, of the somewhat greater distance over the single-line route of the Pennsylvania as against the addition of the expense of the numerous interchange services which the prescribed routes involve. Thus, as appears from the Commission's report (R. 31), the prescribed routes respectively involve the services of four and five railroads as compared with the single-line haul of the Pennsylvania.

As will appear from the discussion under another point,† the reasons given in the Commission's report for its disregard of the relative cost figures introduced by the defendant railroads as a basis for comparing the relative economy of the present and proposed routes are not sustained by the evidence, but it will here suffice to note that the Commission's disregard of this evidence (R. 38-39) will not serve as a basic or essential finding of the affirmative character necessary to sustain its ultimate finding and order.

\* *V. supra*, pp. 62, 63.

† *V. infra*, p. 103, *et seq.*

### III. THE DISTRICT COURT ERRED IN FAILING TO HOLD THAT THE COMMISSION'S ORDER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, BUT IS AGAINST THE EVIDENCE, AND IN HOLDING THE CONTRARY.\*

As will be developed under the appropriate subdivisions of this point, the Commission's ultimate finding that the prescribed routes "are necessary and desirable in the public interest and \* \* \* are needed to provide adequate and more efficient and adequate and more economical transportation" is not only without support in the record but is contrary thereto, and its order based thereon is therefore invalid.

*Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S. 433, 449;

*Interstate Commerce Commission v. Union Pacific R. R.*, 222 U. S. 541, 547;

*The Chicago Junction Case*, 264 U. S. 258, 264-266;

*Northern Pac. Ry. Co. v. Department of Public Works*, 268 U. S. 39, 44-45;

*State of Florida v. United States*, 282 U. S. 194, 213;

*United States v. Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 506.

#### **A. The Commission's Ultimate Finding That the New Routes Are Needed To Provide Adequate Transportation Is Without Support In the Record Which Shows That Adequate Transportation Is Now Available.**

As developed above, the concept of adequate transportation as that expression is used in clause (b) relates to adequacy of the physical transportation service as distinguished from the measure of the rates charged therefor. Furthermore, clause (b) contemplates no comparison

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\* This Point is supported by Assignments of Error Nos. 2, 3, 5-7, 14, 20-24, 35-40.

of adequacy. The question is not whether the present route is *as* adequate as the routes sought—as supposed by the Commission (R. 40)—but whether the existing routes provide adequate transportation.

The adequacy of the physical transportation service available over the existing routes of the Pennsylvania—both direct and via Hagerstown—is well established by the record and is also reflected in the specific finding of the Commission quoted above.\*

In view of this specific finding the exception contained in clause (b) to the short-haul rule cannot be invoked because, whatever the findings as to relative efficiency or economy of the present and proposed routes, it is a pre-requisite to the application of clause (b) that the Commission make a valid finding that the proposed routes are needed in order to provide adequate transportation. But such a finding cannot be made where the existing routes already provide adequate transportation. In this connection it should be noted that the word “adequate” as used in clause (b) is not employed in a relative or comparative sense. In this situation clause (b) is not operative to make the short-haul rule inapplicable, and the Commission was without power in the circumstances to make the order which is here assailed.

**B. The Commission's Ultimate Finding As To the Greater Efficiency of the New Routes Is Not Supported By, But Is Against, the Evidence, and the District Court Erred In Holding the Contrary.**

1. COMPLAINANT PRESENTED NO EVIDENCE TO THE COMMISSION AS TO THE RELATIVE EFFICIENCY OF OPERATION OF THE PRESENT AND PROPOSED ROUTES IN THEIR ENTIRETY.

The expression “more efficient transportation” as used in clause (b) naturally suggests the idea of a more

\**V. supra*, p. 75.

effective transportation service in the sense of accomplishing it more quickly and also the idea of expending less time and energy in its accomplishment. It will therefore be in order to examine the evidence which in this respect bears upon a comparison of the proposed routes with the existing routes of the Pennsylvania.

In the evidence presented by complainant to the Commission there was no attempt to compare the relative efficiency or economy of the present and proposed routes as through routes from origin to destination. The lack of findings on this subject has already been noted.\* While the Commission's report (R. 32) includes the statement that

“The routes sought up to Hagerstown are well established and generally accepted as reasonable by shippers and the carriers parties thereto to points in eastern territory.”

even this statement is not based upon anything here of record, but appears to have been lifted from the decision of Division 4 in the first *Stickell case*.† Aside from the fact that it may not here be used as evidence (*United States v. Abilene & S. Ry. Co.*, 265 U. S. 274), there is no record basis by which the relative efficiency or economy of such routes up to Hagerstown plus the prescribed routes beyond could be compared with the existing routes in their entirety from origin to destination.

As concerns the absence of any basis for a comparison of the efficiency of the proposed and existing *direct* routes, this appears to have been admitted in the Reply Brief for the United States in the Court below in the following statement:

“Clearly it would be impossible for the Commission on the complaint of a Hagerstown shipper, to deter-

\* *V. supra*, p. 74, et seq.

† *Stickell & Sons v. W. M. Ry. Co.*, 146 I. C. C. 609, 615.



mine under exemption (b) whether a proposed route through Hagerstown would be 'more efficient or more economic,' either from the standpoint of service to the shipper or from the standpoint of railroad operation, if it did not compare conditions over such route with conditions over routes actually available to the Hagerstown shipper, and the only service available to the Hagerstown shipper is by way of Hagerstown."

Parenthetically it may be noted that this argument of the United States begs the essential question, which is as to whether the comparisons contemplated by clause (b) is with the direct or indirect routes between the termini. Stated differently, it begs the question whether clause (b) is in harmony with, or an exception from, the national transportation policy of Congress to protect the interests of the shipping public generally as against an adverse interest of an individual shipper or transit operator. But for the purpose of the immediate argument it is apparent from the foregoing statement by the United States that there is nothing of record which would support a finding that the prescribed routes are more efficient than the *direct* routes of the Pennsylvania from points of origin to points of destination.

While relying upon their contention that the comparisons contemplated by clause (b) are as between the proposed routes and the existing *direct* routes, it should here further be noted that even if the proper comparison were as between the proposed and existing routes *via Hagerstown*, there would still be no record support for the Commission's ultimate finding with respect to relative efficiency as concerns the *entire routes* from points of origin to points of destination.

If, for example, the efficiency of the several routes is to be considered from the standpoint of the elapsed time of movement thereover from point of origin to point of destination, then the record will be found to be devoid

of information comparing the prescribed and the existing routes via Hagerstown. Fragmentary information on this subject the record contains, but no such evidence as would support a finding of more expeditious service over the prescribed routes than over existing routes via Hagerstown *from point of origin to point of destination.*

A witness for complainant made reference to the lesser distance over the proposed routes from Chicago to Salisbury than over the Pennsylvania's route via Hagerstown (Ex. 5, R. 359, 221-222), and stated (R. 222):

"It makes quicker time and the service is more efficient and economical. \* \* \*"

On cross-examination the same witness, upon being questioned as to the basis of his request for establishment of through routes via York and Fulton Junction, stated that he "was advised" that that was the quickest route; that he asked the Western Maryland Railroad and other traffic people, and that if the shipment were delivered via the Western Maryland and the Pennsylvania at Hagerstown "you lose one day right off the reel" (R. 228-229).

In response to a question from the Commission's Examiner, the witness then testified:

"EXAM. BERRY:—Well, I do not still see why there would be a day lost, a day more required to move by the way of Harrisburg than York; that is what I was trying to find out.

"THE WITNESS:—Well, of course, *we are not moving anything by this requested route* because we have no rates that way, so I do not know what the experience is, and I do know the experience the other way moving.

"EXAM. BERRY:—You do not know that you would gain a day by moving via York?

"THE WITNESS:—That is what I was advised it would be" (R. 230). (*Italics inserted.*)

Subsequently the witness was interrogated by the Examiner (R. 238-239) as to an earlier statement (R. 219) that the proposed routes would save four days' time involved in the back-haul service on the Pennsylvania to and from Hagerstown, and in the switching by the Western Maryland at that point. Following the questions by the Examiner on this subject the witness testified on cross-examination as follows (R. 240):

“Q. (By Mr. Eshelman):—And you did not say, or have you obtained any information as to the length of time that it would take for either of the movements to destination, we will say to a similar destination via either of the sought routes through York or Fulton Junction?

“A. *No, those routes are not in effect, so I could not say what they are.* (Italics inserted.)

It must therefore be apparent that so far as any lesser time in transit over the proposed through routes than over the existing routes of the Pennsylvania via Hagerstown, the testimony of complainant's witness is unsubstantial, and is therefore insufficient to sustain the Commission's finding as to their relative efficiency.

2. IF ONLY THE PORTIONS OF THE PRESENT AND PROPOSED ROUTES EAST OF HAGERSTOWN ARE COMPARED, THERE IS NO BASIS OF RECORD FOR A FINDING THAT THE LATTER ARE MORE EFFICIENT.

Complainant's witness testified that the average time required for the movement of a car from Hagerstown via the Pennsylvania to the Eastern Shore is three to four days (R. 238). However, no corresponding length of time was shown by complainant for the movement over the prescribed routes from Hagerstown to the same destinations.

As against the absence of substantial evidence of greater efficiency in the prescribed routes, the record contains definite comparisons of the elapsed time of the freight train schedules via the present and proposed routes from Hagerstown to representative destinations, which show the latter to be inferior to the present routes. Thus, as based upon the testimony of a competent railroad operating officer (R. 349-350), the comparisons are shown to be as indicated in the following tabulation:

COMPARISONS OF ELAPSED TIME OF SCHEDULED TRAIN SERVICE  
FROM HAGERSTOWN, MD., TO SALISBURY, MD., AND CAPE  
CHARLES, VA.

<i>Route</i>	<i>To Salisbury</i>		<i>To Cape Charles</i>	
	<i>Hours</i>	<i>Minutes</i>	<i>Hours</i>	<i>Minutes</i>
P. R. R. ....	31	30	39	15
	24	45	29	55
W. M.-P. R. R.				
via Fulton Jct. . .	33	00	45	45
via York . . . . .	36	30	49	15

Although the foregoing comparisons were based on the only competent evidence with respect to the relative time of movement over the routes from Hagerstown, the Commission refused to find in accordance therewith on the ground that the witness stated that in cases of storms and at times of excessive traffic there were delays which prevented the making of the schedules, and on the ground that no explanation was given as to why a longer time is required for the haul from Salisbury to Cape Charles for traffic moving over the route sought than over the Pennsylvania's route via Enola Yard (R. 37).

The emergency conditions mentioned by the witness (R. 350), which at times affect ability to maintain the arranged schedules, are necessarily not peculiar to any railroad or route, and for purposes of comparison it is



obviously erroneous for the Commission to assume, without a basis of record, that storms, excessive traffic, and similar conditions would not affect the prescribed routes in common with existing routes. Indeed, such assumption is directly contrary to the following statement of the witness which indicates that other railroads were likewise affected (R. 350):

“Q. Do you always make this schedule?

“A. In cases of storms, like we had last spring, where every road was tied up, not only in Pennsylvania, but other competing lines, we would not make it, could not make it, physically make it.”

Similarly the Commission's disregard of the positive and uncontroverted testimony by the only operating witness on the subject, of the relative amounts of time required for the movement from Hagerstown to the Peninsula over the existing and the proposed routes, on the ground that no explanation was given as to the reason for the greater difference in time via the two routes in the case of Cape Charles than in the case of Salisbury, represents an unwarranted and erroneous excursion from the record to defeat the uncontradicted evidence (R. 37). The fact is that the witness was not cross-examined on the point nor was any opportunity given him to make the explanation if one was desired. This criticism contained in the Commission's report first appeared in the proposed report of the Examiner, and in their exceptions defendants, although under no burden of proof in the matter, but merely as an evidence of good faith, reproduced a statement from Witness Clark (subsequent to the receipt of the proposed report) which explained the reason for the greater disparity. This statement is reproduced in Petition of Defendants for Reargument and Reconsideration (R. 156). Complainant's reply to such exceptions objected to the consideration of such statement (R. 156-157). (Also see Reply of Complainant to said Petition

(R. 191-192.) Granting that the Commission, under these circumstances, was not entitled to receive or to rely upon such explanation of the witness, in view of complainant's objection and lack of opportunity for cross-examination, the Commission was not justified in failing to make the findings required by the facts of record and in disallowing their force on the basis of an unjustified assumption.

To destinations other than those on the Peninsula, such as Milford, N. J., and Chatham, Pa., specified in complainant's Exhibits 3 and 4 as destinations in which it is interested, the only evidence of record with respect to train service was that of Witness Clark, which was to the effect that better service would be available from Hagerstown over the Pennsylvania's routes via Enola than over the proposed routes via York or Fulton Junction (R. 349, 351). This testimony was uncontroverted.

3. THE COMMISSION ERRONEOUSLY REFUSED TO CONSIDER DEFENDANTS' EVIDENCE OF DIFFICULT OPERATIONS INCIDENT TO INTERCHANGE AT YORK AND FULTON JUNCTION BASED ON ITS UNJUSTIFIED FINDING UNDER SECTION 3 (4).

**a. In determining the efficiency of the routes the Commission erroneously disregarded this evidence.**

There has been pointed out above\* the nature of the Commission's error in assuming that, in the determination of the relative efficiency of routes under clause (b), it is entitled to disregard evidence of difficult operating conditions affecting the proposed routes on the ground that such evidence would indicate an omission to comply with the duty under Section 3 (4) of the Act, 49 U. S. C. 3 (4),† to afford all reasonable, proper, and equal facilities.

\* *V. supra*, p. 84.

† Appendix 4, *infra*, p. 6a.

ties for the interchange of traffic between their respective lines and connecting lines. This error of law was doubtless responsible for the Commission's disregard (R. 37-38), in determining the relative efficiency of the routes involved, of defendants' evidence of the difficult operating conditions incident to the interchange at York and Fulton Junction.

**b. Description of the difficult operating conditions incident to interchange at York and Fulton Junction.**

The operating witness explained how the freight train service of the Pennsylvania converges upon and disperses from Enola Yard, and how traffic routed through that junction receives the benefit of the scheduled train movements to and from that center (R. 338-341). He also explained how traffic which does not reach the Pennsylvania so as to enter that stream, but reaches it at other such points such as York or Fulton Junction, which are not primary points for the make-up and dispatchment of Pennsylvania freight trains, does not secure the advantage of movement in the arranged freight train schedules, but necessarily would enjoy a less expeditious movement (R. 340-345).

In this connection the witness described the limited facilities and difficult operating conditions incident to the interchange of through traffic between the Western Maryland and the Pennsylvania at York and Fulton Junction. Thus, the interchange between the Western Maryland and the Pennsylvania at York is not such as to make a route *through* that junction an efficient one. The interchange track is about 3 miles from the Pennsylvania's yard and to get cars from it the Pennsylvania engines must pass through city streets, passing 18 crossings at grade. This movement is through a heavy industrial area, and interference from switching engines is frequent. While York

was established by the Commission as an interchange point between these roads for taking care of traffic originating or terminating in that area,\* it would not be satisfactory as a junction on through traffic. The scheduled freight train service from York to Eastern points operates over a single-track line of limited capacity to Columbia, Pa., 13 miles distant. Here cars for the Eastern Shore would have to be cut out and placed so as to be picked up by a train operating out of Enola Yard through Perryville, Md., to Edge Moor Yard near Wilmington. Here further classification would be necessary (R. 343-345).

From an operating standpoint Fulton Junction would be inefficient as an interchange point on this traffic. There is but one interchange track at that point. It holds about 28 cars and is used by both roads, as well as serving three private sidings (R. 340-342). Cars received from the Western Maryland at this point must be handled to the Pennsylvania's Gwyn's Run Yard, about  $1\frac{1}{2}$  miles south. This involves a partial use of a main passenger track near the south entrance to the B. & P. tunnel. Because of the large number of train movements through this tunnel—an average of 177 per day—there is much interference to such freight movements (R. 341-343).

After moving through the B. & P. tunnel which is  $1\frac{1}{2}$  miles long, the cars received from the Western Maryland as described pass through the intricate Baltimore Union Station track layout and thence through the Union Tunnel, which is six-tenths of a mile long, and from there to Bay View Yard. This yard is about 10 miles from Gwyn's Run Yard. At that point cars so handled would be dispatched in road trains. Considering the train density and block restrictions through the Baltimore tunnels and station area, Fulton Junction would not be an efficient point of interchange for this traffic (R. 340-343, Ex. 67, R. 466, 358).

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\* York Mfrs. Assn. v. P. R. R. Co., 107 I. C. C. 219 (1925).



4. COMPLAINANT'S EVIDENCE AS TO RAIL AND TRUCK SERVICE VIA ELSMERE JUNCTION CANNOT SUPPORT THE COMMISSION'S FINDING AS TO THE RELATIVE EFFICIENCY OF THE PRESENT AND PRESCRIBED ROUTES.

The irrelevancy of complainant's reference to the movement of certain of its shipments via rail and truck through Elsmere Junction, Del., to the question of the relative efficiency of the proposed and present routes has been dealt with above.\* As there noted, the comparison of routes contemplated in clause (b) is of all-rail routes and not of such routes by rail and truck.

But the Commission's finding is otherwise contrary to the record. *The reason for shipping the 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction and then by truck to points on the Delmarva Peninsula, rather than over the route of the Pennsylvania, was that the grain had not come inbound over the Pennsylvania, and therefore was not entitled under its transit tariff to move outbound over that line.* This is clearly established by a comparison of complainant's inbound and outbound tonnage over the Pennsylvania. Thus, Exhibit 60 (R. 459, 308, 338) shows that for the years 1938, 1939, and 1940, the Pennsylvania handled for account of complainant at Hagerstown 890 cars inbound and 1309 cars outbound. Based on the average weights of 66,044 pounds inbound and 49,200 pounds outbound, this movement amounted to 58,775,600 pounds inbound and 64,402,800 pounds outbound. While the excess of the outbound tonnage over the inbound tonnage may be due to the time lag between the inbound and outbound movement of particular shipments, it furnishes convincing evidence that the reason for not shipping out over the Pennsylvania all or part of the 640 cars which moved to Elsmere Junction—equivalent to 31,488,000 pounds—was due to the fact that complainant did not have available

\*V. *supra*, p. 83.

the inbound P. R. R. billing which would be necessary to entitle the outbound products to move to Peninsula destinations under the applicable P. R. R. transit tariff.\*

**C. The Commission's Ultimate Finding As to the Greater Economy of the New Routes Is Not Supported By, But Is Contrary To, the Evidence and the District Court Erred In Concluding Otherwise.**

**1. COMPLAINANT'S ONLY EVIDENCE AS TO RELATIVE ECONOMY OF OPERATION RELATED TO THE DISTANCES VIA HAGERSTOWN.**

While, as noted above,† the conclusions of the Commission and of the Court below in actuality depend solely upon the greater advantage which would result to the Hagerstown manufacturer from the prescription of the new routes, their decisions in terms construe clause (b) as requiring consideration of the relative economy of operating the present and proposed routes (R. 40, 94). It is therefore in order to review the evidence to ascertain whether it contains anything which would support the ultimate findings that the new routes are needed in order to provide more economic transportation.

With one exception it will be found that complainant introduced no evidence with respect to relative economy

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\* The 56th Annual Report of the Interstate Commerce Commission—1942—contains at page 76 a report of failure of carriers and shippers to comply with tariff provisions providing transit privileges on grain. It there stated in part:

"The transit rules require that freight bills for in-bound shipments to the transit point be registered with the carriers by the operators of all elevators or mills for the purpose of availing themselves of the privileges provided in the tariffs, and that, when a quantity of grain is forwarded from the transit point, a paid freight bill for a similar amount of grain which moved in-bound to the transit point must be surrendered to the carriers."

The Commission's 57th Annual Report—1943—contains reference at page 82 to an indictment against a grain shipper which "made it a practice to surrender against out-bound shipments from a transit point in-bound freight bills which it was not entitled to use for transit purposes."

† *V. supra*, p. 20.

of operation of the proposed routes and the existing *direct* routes. This exception related to the distances over the proposed routes as compared with those of the Pennsylvania via Hagerstown.

To illustrate the situation there are set forth below the distances from Chicago, Ill., to Salisbury, Md., and from East St. Louis, Ill., to Milford, N. J., over the direct routes of the Pennsylvania, and also over its routes via Hagerstown, as compared with the distances over the prescribed routes via York and Fulton Junction. These are based on Exhibits 68 and 69 (R. 467-474, 351-355, 358).

DISTANCES OVER PRESENT AND PRESCRIBED ROUTES

Route	Chicago	East St. Louis
	to Salisbury Miles	to Milford Miles
P. R. R. Direct .....	902	1,027
P. R. R. via Hagerstown .....	1,051	1,176
N.Y.C.—P.&L.E.—W.M.—P.R.R. <sup>1</sup>		
via York— .....	958	1,150
via Fulton Junction .....	946	1,171
Wabash—W. & L.E.—P.&W.Va.— W.M.—P.R.R. <sup>2</sup>		
via York .....	950	1,132
via Fulton Junction .....	938	1,153

<sup>1</sup> Route 1 as prescribed (R. 38, 42-43).

<sup>2</sup> Route 2 as prescribed (R. 38, 42-43).

If, as contended by appellants, the direct routes furnish the only proper comparison, then the direct routes of the Pennsylvania are the shorter. But if the Pennsylvania's routes via Hagerstown are used for purposes of comparison it will be found that the prescribed routes are somewhat shorter. But in the matter of operation economy is not to be measured only in miles. This was

clearly recognized in the discussion between the members of the Senate Subcommittee holding hearings on S. 1085 and Commissioner Eastman, pp. 9, 17. The first of these references is quoted *supra*, pp. 62, 63. Other elements enter into the question of economical operation, such as the number of railroads participating therein and the amount of expense for interchange between them. This feature will next be noted.

2. THE PRESCRIBED ROUTES WOULD SUBSTANTIALLY INCREASE THE NUMBER OF PARTICIPATING CARRIERS AND THE INTERCHANGE EXPENSE.

On traffic coming from beyond the market points such as Chicago and East St. Louis, the prescribed through routes would substitute 4-line and 5-line hauls for the single-line haul of the Pennsylvania (Ex. 68, R. 467, 358). As the Court below, in this same connection, further found:

"It is true the evidence introduced before the Commission by the carriers was uncontradicted to the effect that the prescribed new routes would substantially increase the number of participating carriers and the number of interchange services. For example, on traffic originating at points in Central Territory (including market points not served by the Pennsylvania), these routes would, generally speaking, substitute 4 or 5-line hauls for 2-line hauls via the Pennsylvania; and where the traffic did not originate on the New York Central or the Wabash, would, generally speaking, involve 5 or 6-line hauls" (R. 99).

It is generally recognized that the interchange expense incident to multiple-line hauls as compared with single-line hauls is substantial.\* This is specifically shown in

\* See for example data on cost of intercarrier interchanges from Freight Traffic Report of the Federal Coordinator of Transportation, May, 1935, Vol. I, pp. 104-105, excerpts from which appear in printed Hearings on S. 1261 before subcommittee of House Committee on Interstate and Foreign Commerce (75th Cong., 2nd and 3rd sessions) pages 143-144. They also appear at pages 140-141 of printed Hearings on H. R. 3400 (76th Cong., 1st sess.) before a subcommittee of the same House Committee.



instant case in Exhibit 68 (R. 467, 358). Thus in the case of the direct single-line route of the Pennsylvania from Chicago to Salisbury, Md., there is no expense incurred for intercarrier interchange. But in the case of the prescribed multiple-line routes via York and Fulton Junction the interchange expense is an important item. It appears from the following comparison of per car mile costs taken from that Exhibit:

INTERCHANGE COSTS—CHICAGO TO SALISBURY.

Route	Operating Expenses Only	Full Costs*
P.R. ....	—	—
C.—P.&L.E.—W.M.—P.R.R. <sup>1</sup> (via Fulton Jct.) .....	\$29.98	\$56.89
Washington—W.&L.E.—P.&W.Va.—W.M. —P.R.R. <sup>2</sup> (via York) .....	38.88	73.68

<sup>1</sup> Route 1 as prescribed (R. 38, 42-43).

<sup>2</sup> Route 2 as prescribed (R. 38, 42-43).

The foregoing costs were uncontroverted.

If comparison were made of the prescribed routes with the Pennsylvania's route via Hagerstown, the showing as to interchange expense would be similar to that previously indicated. The switching service which is done for the Pennsylvania by the Western Maryland at Hagerstown is paid for by the Pennsylvania (R. 30) and the service is therefore to be regarded as a Pennsylvania *terminal* (not interchange) service in each direction. Cf. Ex. 69, 473, 354-355, 358.

3. THE CARRIERS' COST DATA SHOWED THAT PERFORMANCE OF PHYSICAL TRANSPORTATION OVER THE PRESCRIBED ROUTES WOULD BE MUCH LESS ECONOMIC THAN OVER THE EXISTING ROUTES.

The uncontroverted evidence of record is to the effect that the performance of the physical transportation over the

\* Includes operating expenses, rents, taxes, 5.75% return, and passenger equipment depreciation.

prescribed through routes would be much less economic than over the existing routes. This is shown by the comparative cost data computed from the annual reports of the carriers to the Commission for the year 1940 and set forth in Exhibit 68 (R. 467, 351, 358). Based upon an assumed direct movement of 33 tons in box-car equipment (without stop for transit at Hagerstown) the following tabulation makes comparison of the freight service cost for the existing and prescribed routes from Chicago to Salisbury, and from East St. Louis to Milford:

#### COMPARATIVE FREIGHT SERVICE COSTS.

(FOR DIRECT MOVEMENT—NO STOP AT HAGERSTOWN FOR TRANSIT)

<i>Route</i>	<i>Operating Expenses Only</i>	<i>Full Costs*</i>
<i>From Chicago, Ill., to Salisbury, Md.</i>		
P. R. R. Direct .....	\$121.07	\$229.93
Route No. 1, via York <sup>1</sup> .....	165.81	327.85
Route No. 2, via Fulton Junction <sup>2</sup> ..	206.23	358.49
<i>From East St. Louis to Milford, N. J.</i>		
P. R. R. Direct .....	\$133.06	\$252.70
Route No. 1, via York <sup>1</sup> .....	184.94	369.57
Route No. 2, via Fulton Junction <sup>2</sup> ..	202.64	387.04

<sup>1</sup> New York Central to Youngstown, Ohio, Pittsburgh & Lake Erie to Connellsville, Pa., Western Maryland to York, Pa., and Pennsylvania beyond.

<sup>2</sup> Wabash to Toledo, Ohio, Wheeling & Lake Erie to Pittsburgh Junction, Ohio, Pittsburgh & West Virginia to Connellsville, Pa., Western Maryland to Fulton Junction, and the Pennsylvania beyond.

While the direct routes clearly furnish the proper basis for comparing the economy of the proposed routes, it is notable that even if the comparison is made with the Pennsylvania's routes via Hagerstown, the costs of opera-

\* Includes operating expenses, rents, taxes, 5.75% return, and passenger deficiency.

tion thereover are disclosed to be less than over either of the prescribed routes. In the following tabulation there are shown the comparative freight service costs over these routes based on an assumed carload movement in box-car equipment of 33 tons to Hagerstown for stopping in transit, and of 1.34 cars of outbound products at 24.6 tons therefrom.

## COMPARATIVE FREIGHT SERVICE COSTS.

(VIA HAGERSTOWN FOR TRANSIT)

Route	Operating Expenses Only	Full Costs*
<i>From Chicago, Ill., to Salisbury, Md.</i>		
P. R. R. ....	\$184.10	\$349.65
Route 1, via York <sup>1</sup> .....	191.18	377.64
Route 2, via Fulton Junction <sup>2</sup> .....	232.08	409.32
<i>From East St. Louis, Ill., to Milford, N. J.</i>		
P. R. R. ....	\$196.09	\$372.42
Route 1, via York <sup>1</sup> .....	211.08	421.15
Route 2, via Fulton Junction <sup>2</sup> .....	227.33	435.54

<sup>1</sup> New York Central to Youngstown, Ohio, Pittsburgh & Lake Erie to Connellsville, Pa., Western Maryland to York, Pa., and Pennsylvania beyond.

<sup>2</sup> Wabash to Toledo, Ohio, Wheeling & Lake Erie to Pittsburgh Junction, Ohio, Pittsburgh & West Virginia to Connellsville, Pa., Western Maryland to Fulton Junction, and the Pennsylvania beyond.

Although there was no burden of proof on the defendant railroads, the cost data introduced by them, from which the foregoing summary is taken, established that the cost of transportation over the proposed routes, which the Commission has now prescribed, would be greater than over the existing routes of the Pennsylvania via Hagerstown. This evidence was not controverted. Never-

\* Includes operating expenses, rents, taxes, 5.75% return, and passenger deficiency.

theless, the Commission made no finding in accordance therewith, and further failed to make any finding concerning the comparative costs of transportation over the prescribed and existing routes.

The Commission disregarded the said cost data on the stated ground that "its value, if any, is limited to average system costs of all less-than-carload and carload freight, while here we are dealing with a heavy loading commodity moving comparatively long distances in well-defined channels."

The errors of the Commission in this respect were several. Thus, by its disregard of the railroads' cost data, it in effect placed on them the burden of proving that the existing routes are more economical of operation than the proposed routes. But the law casts no such burden on defendants, but rather on the complainant to prove that transportation over such routes can be performed more economically than over the existing routes. This is implicit in the very form of the statute which prohibits short-hauling "unless" the exceptional conditions are made to appear.

The Commission's disregard of the cost comparisons on the ground that they merely represented "average system costs of all less-than-carload and carload freight," was without justification, since if it had made any analysis at all of the cost data underlying the comparisons it would have noted that the costs applicable to less-carload traffic, such as platform costs, etc., were eliminated, and were not included in the cost comparisons of the respective routes.

The criticism of the costs as representing "average system costs" was likewise unjustified. The criticism of system average costs as such generally relates to the use of average unit costs, such as costs per car-mile or per ton-mile, which include both line and terminal elements on an average basis. These may fail of reliability where applied for distances shorter or longer than the average



hauls in which such costs were incurred. *Baltimore & O. R. Co. v. United States*, 9 F. Supp. 181, 192, 196 (1934). This criticism is obviated if costs are computed under a proper separation of line and terminal cost elements. In the instant case the formula employed by the witness for such separation was that contained in the Commission's Bureau of Statistics Statement No. 3812 of March, 1938, with certain changes as indicated in Exhibit 68 (R. 476, 351-354, 358). While the issuance by the Commission's Bureau of this formula does not bind the Commission, the fact of its issuance indicates a serious and considered effort on the part of impartial persons expert in such matters to outline a reasonably reliable basis for cost ascertainment. Moreover, it is to be noted that defendant railroads did not undertake to ascertain precise or exact costs of handling particular cars or particular traffic, but only to determine the relative economy of transportation over the proposed and existing routes. It is this relative comparison that clause (b) undoubtedly contemplates. See in this connection the statement of Commissioner Eastman before the Senate subcommittee holding hearings on S. 1085 quoted above.\*

In disregarding these cost comparisons on the ground that "here we are dealing with a heavy loading commodity", the Commission necessarily assumed that the loading of the traffic involved—which is 33 tons inbound to Hagerstown and 24.6 tons outbound—is heavier than the average of all traffic. There is nothing in the record to warrant this assumption. On the contrary, had the Commission preferred the fact to the assumption it could have ascertained (as indicated in the Petition of Defendants for Reargument, R. 167) that complainant's traffic was not "heavy loading" as compared with the average load of revenue carload freight for the railroads involved in the routes prescribed.

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\* *V. supra*, pp. 62, 63.

While the science of railway cost accounting has not developed to a point where a railroad can with exactness apportion to the transportation of a particular commodity its fair portion of costs incurred in common with the transportation of other commodities or of passengers, both the Supreme Court and the Commission have indicated that resort may at times be had to costs based on average costs of all traffic. *Atlantic Coast Line v. Florida*, 203 U. S. 256; *Wood v. Vandalia R. R. Co.*, 231 U. S. 1, 6, 7; *Smyth v. Ames*, 169 U. S. 466; *Georgia Pub. Serv. Comm. v. Atlantic Coast Line R. Co.*, 186 I. C. C. 157, 184. In *Baltimore & O. R. Co. v. United States*, 298 U. S. 349, the so-called *Citrus Divisions Case*, the Supreme Court, in sustaining the decree of the Court below (9 F. Supp. 181), considered the cost data there relied on to prove confiscation, which data—unlike those of record here—had not been computed upon a separation of line and terminal costs, and said on this point at page 378:

“The burden on appellants, heavy though it is, does not require them to prove with arithmetical accuracy the cost of the transportation covered by the challenged divisions or the value of the property used to perform it, or the proportion attributable to that service. It is enough, if the evidence preponderating in their favor reasonably warrants findings sufficient to support the decree sought. Many issues as to which demonstrable accuracy is impossible have to be decided by the courts. *In ascertaining costs of transportation of one out of many commodities hauled by railroads it is impossible to attain precision. Mere lack of it is not ground for objection either to the evidence offered or the facts which it tends to prove.*” (Italics inserted.)

## IV. CONCLUSION.

Appellants respectfully submit that whether clause (b) be interpreted only in accordance with the natural meaning of the words, or in the light of the objectives indicated in the national transportation policy declared by the Congress, or whether in the more specific light of its own legislative history, there can be no escape from the conclusion that it is not operative except there be a finding that the existing routes do not provide adequate transportation from point of origin to point of destination and that the proposed routes between those points can be operated more efficiently or more economically than the existing routes. The Commission's order, and the decree of the District Court sustaining it, are founded upon the erroneous conclusion of law that clause (b) is operative if the new routes would prove advantageous to a transit operator in the territory intermediate between origin and destination, regardless of the fact that the individual interest of such operator may be adverse to that of the general public, and regardless of whether transportation over the new routes could be performed more efficiently or more economically. As a result of this mistake of law the Commission acted in excess of its lawful power.

Appellants also submit that the decree of the District Court should be reversed for failure to set aside the Commission's order in that neither such order nor the Commission's ultimate finding upon which it is based are supported by the essential or basic findings necessary to its validity.

These appellants further submit that the findings of the Commission on which its order is based are not supported by substantial evidence, but are contrary to the evidence of record, and that the order is accordingly arbitrary and invalid.


WHEREFORE, it is submitted that the decree of the District Court is in error and should be reversed with instructions to sustain the petition and to set aside the Commission's said order.

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DECEMBER 20, 1944.





**APPENDIX 1.**

Act to Regulate Commerce as Amended by Mann-Elkins  
Act of June 18, 1910, 36 Stat. L. 539 (552).

Third and fourth paragraphs of Section 15.

"The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

"And in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route **substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.**"

**APPENDIX 2.**

Act to Regulate Commerce As Amended by Transportation Act of 1920, February 28, 1920, and renamed as Interstate Commerce Act. 41 Stat. L. 456 (457, 485, 486).

Paragraphs (3) and (4) Sec. 15.

“(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character; nor shall the Commission have the right to establish any route, classification, or practice, or any rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

“(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require

any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: *Provided*, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."

**APPENDIX 3.**

Interstate Commerce Act as Amended by Transportation Act of 1940, September 18, 1940, 54 Stat. L. 898 (911-912).

Paragraphs (3) and (4) Sec. 15.

“(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carrier subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

“(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in



such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."

**APPENDIX 4.**

Interstate Commerce Act as amended by Transportation Act of 1940, September 18, 1940, 54 Stat. L. 898 (903-904).

**Section 3 (4)**

“(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term ‘connecting line’ means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.”

## APPENDIX 5.

**Excerpts from Printed Hearings Before Congressional Committees On Bills to Repeal the Short-Haul Rule.**

For more convenient reference the following excerpts from the Hearings on S. 1261 will be set forth under the same subject headings as are used in the brief, *supra*, pp. 46-52.

(1) *Protection of investment of initial carrier.*

Mr. Paul P. Hastings, Vice President of the Atchison, Topeka & Santa Fe Railway system, testifying before a Subcommittee of the House Committee on Interstate and Foreign Commerce (75th Cong., 2d and 3d Sess.) on S. 1261, after noting that more than 50 percent of its total mileage was classed by the Commission as branch line railroad, stated at pages 109-110 of the printed Hearings:\*

"While these branch lines were in part constructed or acquired in some instances to serve oil fields, coal, and other mineral deposits, or lumber-producing territory, generally and in the main they serve agricultural regions more or less sparsely populated and of relatively light density of traffic. It is a generally well-known and accepted fact that practically all of the branch lines of the Santa Fe system could not exist or be operated at a profit were they operated as separate and independent railroads, and it is only by their operation as a part of the Santa Fe system, and the handling of traffic to and from points on such branches over the main lines of railroad of the Santa Fe, that a profit can be realized from such traffic and the system as a whole operated profitably. Obviously, therefore, the investment made in the past in these branch lines is jeopardized and similar investments

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\*These House Committee hearings on S. 1261 were incorporated in the Hearings on H. R. 3400 (76th Cong., 1st Sess.), wherein the indicated testimony of this witness appears at pages 106-107.

in the future made unattractive and undesirable if the principle be announced that the Santa Fe may be required, in respect to traffic originating on these branches, to turn it over to another line, generally a competitor, at the first junction after it reaches the main line, or before it reaches a main line, notwithstanding the fact that the route of the Santa Fe from origin to destination is reasonably direct and its service adequate and satisfactory to the shipper. In these cases it is the Santa Fe that has risked its money in pioneering in its own and the public interest. A policy is obviously unfair that would unduly deprive it of the fruits of such investment and pioneering for the benefit of some competitor which has not assumed the risk of loss of its capital in the new territory."

To somewhat similar effect is the following from the statement of F. R. Newman, Vice President, Great Northern Railway Company, at page 117 of the Hearings on S. 1261 (pp. 114-115 of Hearings on H. R. 3400):

"The maps referred to before will indicate numerous branches that have been built in order to open up new agricultural development and such investments have been made by the Great Northern and Northern Pacific so that they will enjoy and should be entitled to the long haul on the products which is a result of such development, so long as such routes give the Great Northern and Northern Pacific a maximum haul without undue circuitry. If such assurances were taken away there would be no incentive for the investment incidental to the construction of such branches and it is improbable that such branches would have been built had we not felt that the interest of these two companies would be protected and for the further reason that the investment could not



have been justified by the traffic moving solely on these branch lines.

"It has been found necessary in assisting the development of new industries to make rates on raw products to points where such industries are located that are less than what might be termed reasonable rates considered in and of themselves. For example, sugar beets to sugar refineries, logs to lumber mills. These rates are made in anticipation of obtaining a reasonable haul upon the out-bound products resulting from the in-bound haul of raw products and if there were no assurance of obtaining a profitable haul upon the lumber and sugar, we would naturally be reluctant to establish lower rates on the in-bound haul of raw commodities."

R. J. Doss, Traffic Manager, Atlantic Coast Line, speaking for numerous Southern railroads, including appellants Louisville & Nashville and Southern Railway, stated at page 171 of the Hearings on S. 1261 (also reported at pages 166-167 of the printed Hearings in H. R. 3400), as follows:

"The railroads have invested millions of dollars in providing branch, gathering, or feeder lines. Of late years they have been able to do this only after obtaining a certificate of convenience and public necessity from the Interstate Commerce Commission. To obtain it they must show the Commission the purpose of the proposed branch line and the estimated revenue expected from its operation. These estimates are based on the volume of traffic expected to be developed and upon the assumption that it will move over customary and economical routes. Feeder lines have been built for the purpose of bringing traffic to the main line even though it was known that the local traffic on the branch lines would not be enough to

justify their operation. The expenditure has been justified because of the revenue which the trunk line owning the branch line expected to obtain for its long haul on business originating upon the gathering lines. No railroad will plan the construction of added mileage unless it can expect that there will be full utilization of its transportation plant in handling the tonnage which is expected to be developed.

"If, after a new extension is constructed, the railroad is not permitted to fully utilize its facilities, the purpose of the construction is largely nullified and the investment in the property is placed in jeopardy. Many branch lines intersect other railroads, and, even if they do not, the trunk line usually intersects another railroad a short distance beyond its junction with the branch line. If the trunk line is forced to surrender the branch-line traffic to its competitors before the traffic reaches the main-line junction, or even after performing a short haul beyond the trunk-line junction, where is the safety of the investment which has been made? The effect of this bill would be to take away from one railroad the fruits and rewards for what has heretofore been a conservative and proper investment and to give the fruits and rewards from that investment to another railroad which has made no capital expenditure in connection therewith. It takes away from railroads all incentive to extend their lines into virgin territory and there develop traffic."

To the same general effect see the statements of:

E. W. Soergel, Assistant Freight Traffic Manager of the Chicago, Milwaukee, St. Paul & Pacific Railroad, page 122, Hearings on S. 1261 (pages 119-120 of Hearings on H. R. 3400); and

D. R. Lincoln, Assistant to Chief Traffic Officer, Missouri Pacific Lines, pages 130-134 of Hearings on S. 1261 (pp. 127-132 of Hearings on H. R. 3400).

(2) *Protection of initial lines in the operating expense of originating traffic.*

Mr. D. R. Lincoln, Assistant to Chief Traffic Officer, Missouri Pacific Railway, testifying before a Subcommittee of the Senate Committee on Interstate Commerce on S. 1085 (76th Cong., 1st Sess.) at pages 27, 81 of the printed Hearings, stated:

“MR. LINCOLN:—In order to provide adequate service, sufficient equipment, and all facilities necessary to take care of the traffic that is offered in a great many instances a considerable expense is entailed with respect to the empty cars which are required to be hauled long distances, to take care of the business. For instance, in the State of Kansas, with a large wheat crop, there is assembled every summer, in advance of that crop, perhaps 10,000 freight cars.

“SENATOR REED:—As high as 30,000, Mr. Lincoln. I say that because I am more familiar with that than you are, I believe.

“MR. LINCOLN:—Well, perhaps 30,000 cars are placed in that field, anticipating the movement of that wheat crop. Those empty cars are pulled all the way from Chicago and St. Louis by the loading lines—distances of 300 or 400 or 500 miles. When those cars are loaded with wheat for through movement, it stands to reason that the railroads having performed the empty-car haul for those long distances should not be required to surrender that traffic at the first junction or the second junction. In the case of perishables, we have to provide refrigerator cars, anticipating the movement of the perishable commodities. In some instances, if the crop is about ready to be harvested—such as tomatoes, for instance—we anticipate that movement by having 400 or 500 cars assembled from the field. We assemble the cars; we have to provide icing facilities and ice to take care of the

reicing of that freight along that route. Now, it occasionally occurs that the weather conditions will cut that crop 25 percent or perhaps 50 percent; and as a result of that, we have a lot of empty equipment, down there, that is not used but which we have hauled long distances.

"Again I say that when that perishable freight moves, the line that has performed the long empty haul and that has provided the facilities to take care of that perishable movement, certainly should not be required to turn over that traffic to their competitor at the first short junction. That situation pertains in the Rio Grande Valley, with respect to fruits and vegetables, and in Colorado, with respect to tomatoes and potatoes, and pertains all over the country, as to perishable fruits.

"My observation is that the short line's particular interest in this proposition is the transit, storage-in-transit, stop-overs, and so forth. And in all of those instances the freight would be deflected from the natural direct route from origin to destination, in order that somebody off the main route or the reasonable through route may be permitted to be placed upon the same plane as the man who is more fortunately situated on the direct route."\*

*(3) Protection of investments of destination lines in terminal facilities.*

Mr. Harry Wilson, Vice President of the Traffic Executive Association, Eastern Territory, speaking for numerous Eastern railroads, testified at the House Committee hearings on S. 1261, with respect to this subject, as follows at page 153:\*

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\* This testimony also appears in the Hearings on H. R. 3400, at pages 150-151.



"The eastern railroads have spent large sums of money in developing their roads and also their destination terminal facilities. The cost of operating these terminal facilities represents a very large part of the cost of transportation service. In some cases, special facilities have been built by the trunk lines at their terminals to take care of certain classes of traffic which requires special attention. A case in point is that of fruits and vegetables to eastern cities. Several of the trunk line carriers have provided special facilities at terminals for this traffic. These facilities were developed with the thought in mind that said railroads would enjoy the longest haul and a maximum amount of revenue on such fruit and vegetable traffic. These railroads have their own lines from Chicago, and the Mississippi River and the Ohio and Potomac Rivers to the seaboard and if this bill is enacted into law it will be possible for the Interstate Commerce Commission to force these through lines to take in other lines forming a joint route for no other purpose than to afford transit services such as storage and diversion just as the Commission originally proposed to do in the *Hagerstown milling-in-transit case* previously cited, and deplete the revenues of some lines for the benefit of others and increase the cost of operation, thereby reducing the net revenue of the railroads as a whole."

Witness R. O. Small, General Freight Agent of the Chicago & North Western Railway Company, testifying at page 139 of the Hearings on S. 1261\* stated in part as follows:

"During the past 14 years the average length of haul on carload freight on the Chicago & North Western Railway was 155 miles. We have the shortest

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\* This testimony also appears in the Hearings on H. R. 3400 (76th Cong., 1st Sess.) page 136.

average length of haul of any major trunk line operating in the western territory.

"We have large terminal investments in Chicago, Milwaukee, Sioux City, Omaha, and elsewhere in proportion to the size of the city or community.

"With an average length of haul of but 155 miles and heavy terminal expenses on a considerable portion of our traffic, any additional shrinkage in our revenue brought about by being forced to establish additional routes would add a further burden that would be very serious."

On the same subject, and speaking for the Great Northern Railway, Vice President F. R. Newman, testified at the hearings on S. 1261, at pages 117-118, as follows:\*

"We have also invested large sums in terminal facilities in anticipation of obtaining a reasonable haul on the freight using such facilities. For example, investments in ore docks and merchandise docks at lake and ocean ports, and to be deprived of the long haul on freight using such facilities would wipe out or seriously reduce the value of such investments or the incentive to make future investments.

\* \* \* \* \*

"At Seattle there is an investment of \$1,000,000 in ocean dock for developing and handling the trade between the United States and the Orient, but if we were required to turn over import freight to connections at Spokane, approximately 400 miles away, or to the Soo Lines at Minot rather than our long haul through Minneapolis and St. Paul, such trade development would be less enthusiastic."

*(4) Avoidance of interchange expense incident to multiple-line hauls.*

Vice President Hastings of the Santa Fe railway system testifying at the hearings on S. 1261, p. 109, dealt with this subject in part as follows:†

\* This testimony also appears in the printed Hearings on H. R. 3400, pages 115-116.

† Also reported in the Hearings on H. R. 3400, p. 106.

"It is obvious and axiomatic that it is *more economical and efficient* to handle traffic between two points over one line in lieu of two or more different lines, involving the delays and expense incident to interchange of traffic, where the single line is reasonably direct." (Italics inserted.)

Mr. E. W. Soergel, Assistant Freight Traffic Manager of the Chicago, Milwaukee, St. Paul & Pacific Railroad, at the same hearings\* made the following statement on this bill:

"The establishment of a joint route for traffic that a one-line route can handle without undue circuitry is an economic waste because joint traffic is more expensive to handle than is local traffic and the greater the number of carriers in a joint route, the greater the expense. I think one of the troubles today is that there are too many joint hauls and rather than add to them the trend should be toward curtailment. A single-line haul of 500 miles, 1,000 miles, or 1,500 miles requires two terminal services. Add just one other line and four terminal services are necessary. On 3-line hauls we have 6 terminal services, 4-line hauls, 8 terminal services, and 5-line hauls, 10 terminal services. Multiple-line routes are much more expensive not only because of the extra terminal service, but because of delays to equipment at interchange points, extra accounting for apportionment of revenue, car records, and rental. The cost of originating and terminating traffic is high and it certainly is not unreasonable for a line having the traffic in its possession to take the longest possible haul on that traffic, providing the route is not unreasonably long, in order

\*Hearings, S. 1261, p. 121. Also reported in Hearings on H. R. 3400, pp. 118-119.

to spread the high terminal costs over as many miles of its line as it is possible to do." (Italics inserted.)

The statement of Witness Lincoln of the Missouri Pacific Lines at the hearings on S. 1261, contains at page 135 a quotation from the report of the Federal Coordinator on this general subject which is highly informative.\* The statement and quotation are as follows:

"The cost of transportation to the carriers is bound to be increased by adding unnecessary transfers from one railroad to another. This particular situation is quite thoroughly dealt with in the freight traffic report of Federal Coordinator Eastman, from which I quote the following:

"Data indicate that the average rail carload moves approximately 11 percent farther than would be necessary if it were moved by a direct line route in common use. Some degree of circuitry is inevitable so long as there are competitive routes, but the situation is not one which should be viewed with complaisance, since unquestionably the 11 percent additional service is reflected to a considerable degree in the rail cost. On the other hand, the most direct route is not always the most economical; grades, congested lines, or terminals and other operating characteristics are to be considered.

"Intercarrier traffic is the cause for a large amount of this waste of transportation, due to the number of routes usually kept for movements. This traffic would naturally seek the direct route if it were not for competitive carrier effort to deflect it—a condition which, from the standpoint of the individual railways involved, may seem in many cases actually vital to their interest. From the wider public standpoint, it would be cheaper to give a direct subsidy

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\* Also reported at pp. 132-133 of printed Hearings on H. R. 3400.



to protect those interests than it is to provide the subsidiary indirectly plus the waste entailed.\*

'The policy of wide-open carrier routes, however, has developed evils which outweigh these conceded benefits:

'(1) the weapon in the shipper's hands can be, and increasingly in the past few years has been, used as a club by which to compel carriers to grant rate reductions or adjustments, instead of submitting such demands to the Commission.

'(2) The practice leads to prolixity and complexity in tariffs to avoid indefiniteness.

'(3) The policy encourages circuitous routing.

'(4) The policy has greatly increased the necessity, intensity, and expense of off-line solicitation.

'(5) The policy leads to wasteful methods of operation by increasing the number of points at which interchanges are made by greatly increasing the number of interchanges themselves, and by discouraging through intercarrier train operations.†

Further quoting:

'Competition in service would be no less effective if, for a given movement, there were only three or four direct routes open instead of many thousand routes. With direct routes available, grouped into definite channels, the shipper's interest will be advanced by great acceleration in overall speed which results from the movement in through intercarrier trains, and also by the elimination of waste in

\* Freight Traffic Report, Federal Coordinator of Transportation, Section of Transportation Service, May, 1935, Vol. 1, pp. 77-78; also included in statement of Harry Wilson at page 143 of printed Hearings on S. 1261 (Hearings, H. R. 3400, p. 140).

† Federal Coordinator's Freight Traffic Report, Vol. 1, p. 104; also included in statement of Harry Wilson at page 143 of printed Hearings on S. 1261 (Hearings, H. R. 3400, p. 141).

operating expenses which in the end are borne by the shipper'."\*

To similar effect is the statement of Witness Wilson speaking for Eastern railroads, at the hearings on S. 1261, pp. 151-162:†

"The examples which I have cited will indicate to you clearly that the *cost of operation* over a joint route using a short line as an intermediate line is greater than via the direct route, because the distance in most cases is longer, the separate cost of operation on the short line exceeds the cost of operation on a section of the through line of the same distance, and an additional railroad is injected into the route. Additional interchanges at junction points between carriers become necessary in such through routes, and each interchange is expensive, involving station and general office accounting, also switching of cars, and in the case of less-than-carload freight **the freight has to be actually unloaded and reloaded at the interchange point.**" (Italics inserted.)

Witness Doss, representing numerous Southern railroads, with respect to the same feature testified at the hearings on S. 1261, pp. 163-164, in part as follows:‡

"The facts are that, in actual practice, the result in the great majority of instances would be to increase both the length of the haul and the time in transit while at the same time taking away from one railroad the traffic which it has obtained and provided facilities for transporting and giving that freight to another railroad. This would also increase the ex-

\* Coordinator's Freight Traffic Report, Vol. 1, p. 105; quoted in Hearings S. 1261, pp. 143-144 (Hearings, H. R. 3400, p. 141).

† Also reported in printed Hearings on H. R. 3400, p. 149.

‡ Also reported in printed Hearings on H. R. 3400, pp. 159-160.

penses of both lines, due to the additional interchange of freight which would be necessary, the increase of time in transit, and the increase of opportunities for damage to lading and consequent claim payments.

*"The shortening of a route in point of mileage, if accomplished by the insertion of additional participating railroads and multiplication of the number of interchanges between railroads, does not necessarily reduce the length of time in transit. On the contrary it almost always increases it."* (Italics inserted.)

(5) *Promotion of efficiency and economy in operation.*

Witness Soergel of the Chicago, Milwaukee, St. Paul & Pacific, further speaking against Bill S. 1261, which would have eliminated the short-hauling provision, stated in part at page 120 of the printed Hearings thereon:\*

"Its passage will increase operating expenses, prevent economical operation, and entail considerable loss in revenue."

Subsequently, at page 122† the same witness made the following significant statement:

"Considerable thought is now being given to the consolidation of railroads into a fewer number of systems with the object in view of *more economical operation*, but what is proposed here is diametrically opposed to that idea, for instead of a concentration of traffic, it is a dispersion of traffic, scattering it via widely different routes and in reality making *less efficient the entire plant of the trunk-line carriers*. Adding a new route here and a new route there may not in each instance mean a great deal in and of itself, but when the aggregate is taken into consideration, it will have a very disastrous effect and more

\* Hearings H. R. 3400, p. 118.

† Hearings H. R. 3400, p. 120.

and more light traffic density lines will have to be abandoned because of the necessity of sharing with other railroads a portion of the revenue accruing from such traffic that in all justice should be retained by the trunk-line carrier." (Italics inserted.)

A further illustration of the point is contained in the following from the statement of Witness Wilson, presented as a witness by the principal eastern railroads at the Hearings on S. 1261 (p. 148):\*

*"The railroads are striving to practice economy in operation. They are being exhorted to do so by the Interstate Commerce Commission and others in public office and the passage of this bill enabling the arbitrary fixing of joint, uneconomical routes by the Commission would not be in the interest of operating economy or of the shipping public, nor would it in any sense be in the public interest."* (Italics inserted.)

Further, at page 149,† speaking of the report of Division 4 of the Commission in the first Stickell case,‡ the witness referred to

*"\* \* \* the lack of consideration in that case as to whether the route comprising four lines of railroad as against one line was an economical one or not, or whether it actually took money out of the pockets of the carriers, thereby increasing their operating costs, which always has to be met by the shipping public if the railroads are to survive. \* \* \*"*

The primary stress placed by the railroad witnesses on the tendency of the short-haul provision to promote efficiency and economy operation in the interest of the

\* Hearings H. R. 3400, p. 145.

† Hearings H. R. 3400, p. 147.

‡ Stickell & Sons v. W. M. Ry. Co., 146 I. C. C. 609 (1928).



general public is further illustrated by Mr. Wilson's summary of his statement on this occasion. Thus, in urging that the committee reject S. 1261 which would have repealed the short-haul provision, he stated at pages 154-155 of the printed Hearings:\*

“Finally I have endeavored to show the committee—

“First, that the Interstate Commerce Commission should not be clothed with unlimited authority to establish joint through routes or to short-haul carriers and that it is not necessary that it be given this authority and that it is *not in the interest of economical railroad operation or of the public at large.*

“Second, that the short lines have no just claim to be injected into through routes when the operation of such through routes is not in the interest of all the carriers involved from the standpoint of net revenue.

“Third, *that to establish joint through routes for the purpose of affording transit privileges at points on an intermediate railroad is not in the public interest where the net revenue to the carriers is thereby reduced.*” (Italics inserted.)

(6) *Unnecessary injection of short lines in through routes.*

With respect to this consideration as a justifying reason for retaining the short-haul rule, Vice President Hastings of the Santa Fe, testifying at page 115 of the Hearings on S. 1261,<sup>†</sup> stated as follows:

“A good many of the Commission's decisions in recent years in routing cases and in division cases seem to have been based on the need of some carrier rather than on the service it renders the public. Now, if our

\* Hearings H. R. 3400, p. 152.

† Hearings H. R. 3400, pp. 112-113.

road, which we think is solidly financed, ably managed, and has spent hundreds of millions of dollars in developing the West, is to be used financially to carry lines that might not otherwise survive, if that is the policy of Congress or the Commission, I think a good deal of the traffic would be diverted away from us. That is what I fear."

4-

Speaking for the principal eastern railroads, Mr. Harry Wilson dealt with this subject at page 152 of the printed Hearings on S. 1261 (Hearings H. R. 3400, pp. 149-150):

"Now, in making those divisions on local traffic to and from points on short-line railroads, consideration is given to all of the questions involving the necessities of the short-line railroads for revenue.

"Now, the short lines having accomplished that, are coming here and asking you to sanction by law that which will permit them to take from the through lines some additional money by injecting them into through routes, and in every case where that is done—in most cases where that is done, at least—it will *increase the cost of operation and reduce the net income to the railroads.*

"What I have said about the use of short lines as intermediate routes applies also to trunk lines: that is, the larger railroads voluntarily short haul themselves in many cases where a joint route formed of two or more trunk lines affords *economical operation*, but this is quite different than being compelled by an administrative body to establish such routes *regardless of their uneconomic character.*

"It is well known that many of the short lines were built for specific purposes, such as to take out coal, lumber, ores, and other commodities, which were located on their lines in large quantities, and many

of the branch lines of the trunk-line carriers were built for like purposes. At this point, however, the similarity ceases because when the traffic on the branch line of the trunk line, for which it was constructed, has come to an end the trunk line asks the Commission to be allowed to abandon the line and write the loss off its books, while the short line in many cases wants to continue the operation of the property; and now they want the law changed so that they may demand from the trunk lines that they be made parties as intermediate carriers to through routes and be allowed a part of the earnings even though the cost of operation of such joint through routes is greater than the operation via the direct routes over trunk lines, thereby reducing the net return to the carriers, as a whole, which must be made up by the shipping public somewhere else." (*Italics inserted.*)



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IN THE

**Supreme Court of the United States**

October Term, 1944.

No. 182.

THE PENNSYLVANIA RAILROAD COMPANY; THE ATCHAFON,  
TOPEKA AND SANTA FE RAILWAY COMPANY; THE  
BALTIMORE AND OHIO RAILROAD COMPANY, Appellants,

v.  
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION,  
D. A. STICKEL & SONS, Inc., Appellees.

Appeal from the District Court of the United States for  
the District of Maryland.

**APPELLANTS' REPLY BRIEF.**

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January 9, 1945.





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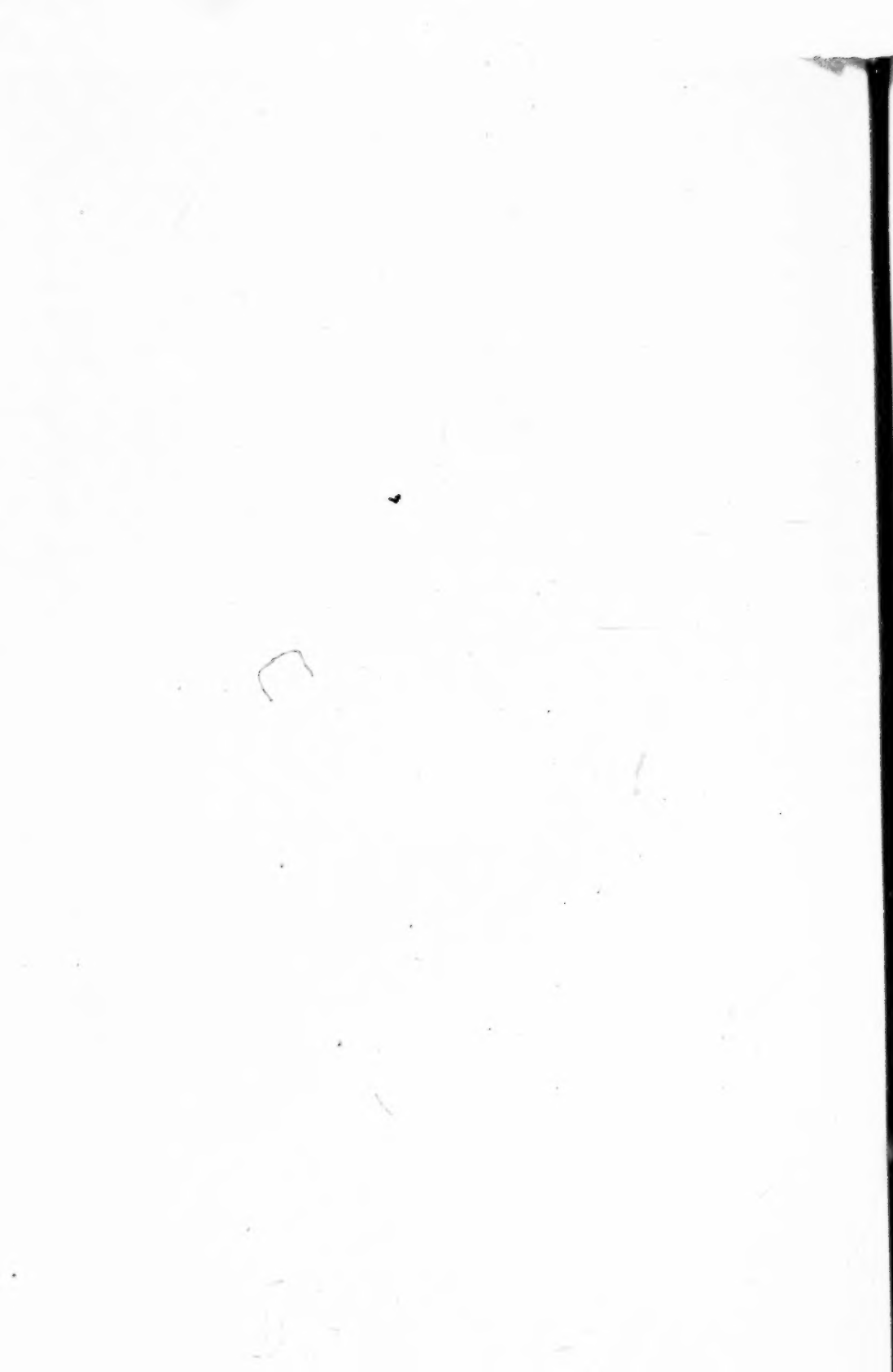
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IN THE  
**Supreme Court of the United States**

October Term, 1944.

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No. 182.

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THE PENNSYLVANIA RAILROAD COMPANY;  
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY;  
THE BALTIMORE AND OHIO RAILWAY COMPANY;  
CHARLES M. THOMSON, As Trustee of the Property of The  
Chicago and Northwestern Railway Company, A Cor-  
poration;  
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD  
COMPANY (Henry A. Scandrett, Walter J. Cummings,  
and George I. Haight, Trustees);  
JOSEPH B. FLEMING AND AARON COLNOR, Trustees of The  
Chicago, Rock Island and Pacific Railway Company;  
LOUISVILLE AND NASHVILLE RAILROAD COMPANY;  
G. W. WEBSTER AND JOSEPH CHAPMAN, Trustees of Minne-  
apolis, St. Paul & Sault Ste. Marie Railway Company;  
GUY A. THOMPSON, Trustee, Missouri Pacific Railroad  
Company, Debtor;  
THE NEW YORK CENTRAL RAILROAD COMPANY;  
THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY;  
SOUTHERN RAILWAY COMPANY;  
WABASH RAILROAD COMPANY;

*Appellants,*

v.

UNITED STATES OF AMERICA,  
INTERSTATE COMMERCE COMMISSION,  
D. A. STICKELL & SONS, INC.,

*Appellees.*

---

Appeal from the District Court of the United States for  
the District of Maryland.

## **APPELLANTS' REPLY BRIEF.**

The following brief is respectfully submitted in reply to the Brief for the United States and the Interstate Commerce Commission, herein for convenience termed the Government's brief, and to the Brief of appellee D. A. Stickell & Sons, Inc., herein termed Stickell's brief. They will be collectively referred to as appellees' briefs.

### **Reply to Point I of Appellees' Briefs.**

The actual interpretation placed by the Commission on clause (b) of Section 15(4) of the Interstate Commerce Act, upon the correctness of which the validity of its order primarily depends, is that such clause becomes operative as an exception to the short hauling restriction on the Commission's power to prescribe through routes if the proposed new route would advantage an individual transit operator located between the points of origin and destination of such through route, who would employ it not for through transportation but primarily to obtain the application of a lower rate on separate shipments moved into and out of its mill under a transit arrangement, and without regard to whether the proposed through routes would be less efficient or less economic of operation than the existing routes.

The Government's brief is therefore inaccurate in stating (p. 3) the question as whether clause (b) becomes operative on a finding that the new through route is "needed to provide 'adequate, and more efficient or more economic, transportation' from the standpoint of service to the shipping public, \* \* \*." Service to the shipping public in respect of through routes would seem to connote through and continuous physical transportation service between the points of origin and destination of the through routes. But however this may be, the public, as the ultimate bearer of the expense of providing transportation, has a real and definite interest in having transportation performed in the most efficient and economic manner and in avoiding the estab-



lishment of new through routes of an inefficient or uneconomic character even though they might advantage an individual shipper. While the Commission found that the new through routes would result in a reduction of freight charges to the Hagerstown transit operator, it made no finding that their establishment would result in a more efficient or more economic railroad operation than was provided by the existing routes between the points of origin and destination.

The form of the Commission's statement of its interpretation of clause (b) appears to be responsible for the misstatement of the essential question of law involved and to explain the failure of the Commission and of the Court below to realize that efficient and economic transportation from the standpoint of the performance of the physical operation is very definitely needed in the public interest.

Thus, in concluding its discussion of clause (b) the Commission (R. 40) stated: "We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint." What the Commission actually meant by this statement, as indicated by the manner in which it applied the exception to the facts before it, was that if the new routes were generally advantageous to the Hagerstown transit operator which would thereby obtain a lower total rate on its combined inbound and outbound shipments, the Commission was free, in invoking the clause (b) exception, to disregard all matters of efficiency or economy in operation. The expression "as well as" was used not in a conjunctive but in a disjunctive sense. That is to say, the Commission in terms interpreted clause (b) as operative as an exception to the short hauling restriction if the new through routes should prove of advantage to the public, or to an individual shipper or transit operator, or to the participating carriers.

An analysis of the reason urged by the Government in support of this construction, upon which the order involved

is based, requires the conclusion that it is erroneous as a matter of law. Thus, at pages 28-30 of its brief the Government refers to the rule of rate making contained in Section 15a (2) of the Interstate Commerce Act, 49 U. S. C. §15a (2), as the source and explanation of the language used in clause (b). Except for the inclusion in 1940 of a clause which is not here important, the present provision is the same as that enacted in the Emergency Railroad Transportation Act, 1933 (48 Stat. 211, 220). As then enacted paragraph (2) read:

“(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.”

Based on the foregoing language the Government, in effect, argues that clause (b) in its use of the expression “needed in order to provide adequate, and more efficient or more economic, transportation” necessarily means the same as the reference in Sec. 15a (2) to the “need, in the public interest, of adequate and efficient railway transportation service”; that it cannot be said that the *carriers* need such service; that obviously *shippers* need such service; and that therefore the Commission properly construed and applied clause (b) as operative to make inapplicable the short-haul restriction where the new through route would advantage the Hagerstown transit operator mainly by affording it a lower charge on its transited shipments. This argument was accepted and adopted by the Court below (R. 90-91).

The Government's argument in this respect, as well as the acceptance of it by the District Court, is in error for two principal reasons. It assumes that it is the policy of

Congress to make the interest of an individual shipper or transit operator paramount to the interest of the shipping public or the general public. That is to say it assumes that Congress in enacting clause (b) meant to make the short hauling restriction inapplicable if a new through route would produce a lower charge for a transit operator even though such route might involve a less efficient or less economic transportation operation, the expense of which would ultimately be saddled on the general or shipping public. That such an assumption is directly contrary to the developing policy of Congress in respect of transportation is indicated by the opinions of this Court in *New York Central Securities Corp. v. United States*, 287 U. S. 12, 24-25, and *McLean Trucking Co. v. United States*, 321 U. S. 67, 80-81, quoted at pages 38, 40-41, of appellants' main brief.

The second principal error involved in the Government's argument in this respect is in misinterpreting the very provision of Section 15a (2) upon which it would rely. Thus, reference to that paragraph as quoted above discloses that the full clause contains words in addition to those which the Government's brief particularly quotes, and which not only do not support its contention but confirm the interpretation for which these appellants contend. Thus, the second clause of Sec. 15a (2) requires the Commission to give due consideration to the need, in the public interest, of adequate and efficient railway transportation service at the lowest *cost* consistent with the furnishing of such service.

This use of the word "cost," which necessarily refers to *costs of operation* as distinguished from tariff rates, was not the result of mere inadvertence. This appears from a consideration of its legislative history. Thus, Section 15a (2) of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act, 1933, approved June 16, 1933 (48 Stat. 211, 220), was based on Senate Bill 1580. Reference to the same provision of the bill as introduced, and set out at page 6 of the Hearings before

the Senate Committee on Interstate Commerce, 73rd Congress, 1st Session, shows that it was enacted in the original form. As so introduced the provision was the same as in H. R. 11642, 72nd Congress, 1st Session, as indicated by H.R. Report No. 1386 of May 19, 1932, at page 4. H.R. 11642 had superseded H.R. 7117, 72nd Congress, 1st Session, which was the subject of hearings before the House Committee on Interstate and Foreign Commerce, 72nd Congress, 1st Session, at which Commissioner Eastman testified at some length. At page 454 of the latter Hearings will be found an amendment proposed by him, the corresponding portion of which would have read:

“(2) In the exercise of its power to prescribe just and reasonable rates, the commission shall give due consideration, among other things, to the present and prospective needs of the public for adequate and efficient transportation facilities and service, to the effect of rates on the movement of traffic, and to the necessity, in the public interest, that the carriers furnish transportation service at the lowest *rates* consistent with adequate service and adequate provision for the transportation needs of the public.” (Italics inserted).

The reason for the use of the word “cost” in Section 15a (2) in this connection, rather than the word “rates” as proposed by Commissioner Eastman, is shown by the questions of Congressmen Hoch and Huddleston and the responses of Commissioner Eastman which follow the reference to his proposed amendment, and particularly at pages 460, 463, and 464 of the printed Hearings on H.R. 7117, which indicate that the intended reference was to “the cost of service to the carriers.” (Hearings, H.R. 7117, p. 460). For convenience, the questions and answers of Congressman Huddleston and Commissioner Eastman which appear at pages 463-464 of those Hearings are reproduced in the Appendix hereto.

It is therefore submitted that whether or not the language of clause (b) may have been borrowed in part from Section 15a (2), or whether it merely had a common origin

with it in the national transportation policy as developed by the Congress and recognized in the decisions of this Court, it is not operative as an exception to the short hauling restriction unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation from the standpoint of *railroad operation*. To so hold does not mean that Congress is making the interests of individual railroads paramount to the public interest. On the contrary, an individual railroad might properly be required to participate in a through route which short hauls it, whereby its freight revenues would be reduced, if the Commission were to find the existing transportation inadequate and that the proposed route would permit of a more economic or more efficient operation the benefits of which would inure to the public through securing performance of the transportation for a lesser ultimate cost.

The Government further argues (p. 36) that the Commission's construction of clause (b) is entitled to much weight as the contemporaneous construction by the administrative agency entrusted with the responsibility of setting in motion the machinery of a new Act, with the enactment of which the Commission had much to do. Its argument in this respect is squarely met by the recent holding of this Court on a similar argument in *Davies Warehouse Co. v. Bowles*, 321 U. S. 144, 156:

"4. Lastly, it is contended that we should accept the Administrator's view in deference to administrative construction. The administrative ruling in this case was no sooner made than challenged. We cannot be certain how far it was determined by the considerations advanced, mistakenly as we think, in its defense in this case. It has hardly seasoned or broadened into a settled administrative practice. If Congress had deemed it necessary or even appropriate that the Administrator's order should in effect be final in construing the scope of the national price-fixing policy, it would not have been at a loss for words to say so."



The Government's argument to the effect that the legislative history of clause (b) supports the interpretation adopted by the Commission and sustained by the Court below is plainly unsound. In short it is that Section 15(4), as finally passed in the Transportation Act of 1940, was a compromise between a Senate Bill which would have removed the short-hauling restriction entirely, and a House Bill which would have left the restriction completely intact, and that since the carriers, which had opposed the complete removal of the short-haul restriction, were given some protection in the bill as enacted against being required to participate in the establishment of new through routes for the purpose of diverting revenues to impecunious short lines, the other amendments of paragraph (4) should be read as intended otherwise to accede completely to the views of the shippers which sought elimination of the short-haul rule. If not so construed, the Government would conclude that "this compromise netted shippers practically nothing." (p. 21, Cf. p. 46).

This argument will not stand analysis for two reasons. It disregards the fact that the construction of clause (b) for which appellants contend represents a distinct relaxation of the short-haul restriction in that the latter becomes inapplicable whenever the Commission finds that existing routes do not provide adequate transportation and that the proposed routes are needed in the public interest to provide adequate transportation and to permit of its accomplishment by the carriers with greater efficiency or economy of operation.

The other reason for the inadmissibility of the Government's argument in this respect is that the construction for which it contends would effectually repeal the short hauling restriction itself. While the Government's brief (p. 34), like the opinion of the Court below (R. 93), denies that this would be so, it is apparent from both that the result would be otherwise than they assert. Thus, the Government argues (p. 35) that Section 15(4) would protect a railroad from

being short hauled by the establishment of through routes to aid a weak short-line carrier. But the prescription of new through routes for this purpose was specifically forbidden by other language inserted in paragraph (4) in 1940. Thus, the example employed by the Government, to show that its interpretation of clause (b) would leave the short hauling limitation a remaining field within which to operate, not only fails to prove its point, but affirmatively disproves it. If the short-haul rule were to have application only in such an instance as the Government suggests, there would have been no need to retain it in view of the contemporaneous enactment of a specific prohibition against establishing through routes to divert revenues to needy railroads. As pointed out in appellants' brief (p. 34), in probably every case the prescription of through routes would provide some shipper or transit operator with a lower rate, i.e., lower over the particular route if not lower than over existing routes, and therefore the interpretation which the Commission's actual decision herein places on the exception contained in clause (b) would make the exception of general application and the short-haul rule itself of no effect.

The reason given in the opinion of the Court below (R. 93)—quoted in the Government's brief (p. 35)—to avoid the conclusion that the Commission's interpretation, which it upheld, would effect the virtual repeal of the short-haul rule, is unsound and illogical. Thus, if clause (b) is operative to set aside the short-haul rule whenever an individual shipper or transit operator is able to prove that the proposed new route would give him cheaper service, and if matters of railroad operating efficiency and economy are to have consideration only in the initial determination of "public interest" under Section 15(3), then indeed is the short-haul limitation repealed by construction in spite of the specific rejection by Congress of all proposals therefor.

What is said above in reply to Point I of the Government's brief will in general also furnish reply to Point I of Stickell's brief. As to the latter, one additional feature may be noted.

At page 14 et seq. of Stickell's brief there is the intimation that the propriety of the establishment of the back-haul arrangement may be open to question. This is incorrect. The transit arrangement at Hagerstown was established in 1921 by the Pennsylvania at the specific request of Stickell, and it was understood that there would be a back-haul charge in addition to the transit charge. At that time, as at the present, these charges totaled 5 cents (4.5 + 0.5 cents) on traffic from west of Pittsburgh. Stickell specifically expressed agreement with this arrangement. (Ex. 45, R. 409-410, 272, 338).

That establishment of a transit arrangement in such an instance as this was for the advantage of the transit operator and in line with approved practice as indicated by the statement of the Commission in *Josey-Miller Co. v. A. T. & S. F. Ry. Co.*, 136 I. C. C. 379, 381 where the Commission stated:

"Out-of-line and back-haul services are primarily for the purpose of assisting shippers disadvantageously located to meet the competition of others more favorably situated, and, being costly, defendants object to further extending them."

That back-hauls are not unusual, but rather that they apply frequently where out-of-route or back-haul service is necessary in connection with transit, is shown by Exhibit 51, (R. 418-430, 286-289, 338) and was recognized by the Commission (R. 31) and by the Court below (R. 98).

### **Reply to Point II of Government's Brief and Portions of Point II of Stickell's Brief.**

Under this point the Government's brief undertakes to answer appellants' contention (pp. 68-72) that the comparisons contemplated by clause (b) are as between the proposed routes and the existing *direct* routes rather than with the Pennsylvania's routes via Hagerstown. The Government's brief then argues (p. 23) that the phrase "between

the termini" which appears in the short-hauling restriction has no relation to the comparison of efficiency or economy contemplated by clause (b) for the reason that such phrase is not used in that clause. If this were a valid argument, the same could be said of clause (a) which makes the short-hauling restriction inapplicable if preservation of a carrier's long haul would make the route unreasonably long as compared with another practicable through route which could otherwise be established. Yet the Commission has recognized that the comparison contemplated by clause (a) should be as between the proposed routes and the existing *direct routes* of the Pennsylvania. Thus, in turning to clause (b) as a basis for escaping the limitation of the short-haul rule in the instant case, the Commission first considered the possible applicability of clause (a) and stated (R. 34):

"It is evident that the Pennsylvania's *direct route* is not unreasonably long and that the prescription of either route 1 or 2 would require the Pennsylvania to embrace in such route substantially less than the entire length of its railroad which lies between the termini of such route." (Italics inserted).

The Commission made no finding as to whether the Pennsylvania's Hagerstown routes were or were not unreasonably long as compared with the proposed through routes. Yet if the Pennsylvania's Hagerstown routes furnished the proper standard of measurement under clause (a), doubtless the Commission would have made a finding with respect thereto. That it did not do so indicates that the proper comparison of the efficiency and economy of the proposed through routes is with the direct routes of the Pennsylvania rather than with its routes via Hagerstown. Nevertheless, as set forth in appellants' main brief (pp. 89-108), the carriers' evidence showed that even with such a comparison the proposed routes were less efficient and less economic than the Hagerstown routes of the Pennsylvania. For further reply to point II, appellants respectfully invite at-

tention to what is said in their main brief at pages 68-72.

What has here been said in reply to Point II of the Government's brief will also serve as a reply to the portion of Point II of Stickell's brief at pages 27-30.

Two additional matters in this portion of Stickell's brief may here be commented upon. At pages 23 and 30 the point is sought to be made that the relative shortness of the elapsed time of transportation *from Hagerstown to destination* over various routes is of importance to Stickell in the marketing of its mixed feed products. But the comparison of relative efficiency which clause (b) doubtless contemplates is of the through-routes as entireties from origin to destination of the joint rate as ultimately applied on the combined shipments. Under the transit arrangement at Hagerstown, Stickell may hold grain or its products for a year before shipping out the mixed feed products.

At pages 31 and 33 the Stickell brief refers to the evidence introduced by defendants before the Commission, including appellants here, comparing the cost of service over the present and proposed routes, as if that evidence were directed to proving precise or actual costs of handling an individual commodity. Since clause (b) appears to contemplate a comparison of the efficiency and economy of *routes*, the cost evidence introduced was directed to comparing the routes upon the basis of the relative cost of service for the system lines involved using the same method of computation as applied to the data for each road reported by it to the Interstate Commerce Commission and employing a formula suggested by a member of the Commission's own statistical staff (Ex. 68-69, R. 351-358).

### **Reply to Point III of Government's Brief and Portions of Point II of Stickell's Brief.**

For reply to what is said at pages 50-51 of the Government's brief concerning Stickell's shipments by rail and truck via Elsmere Junction, appellants respectfully refer to what is said in their main brief at pages 83-84, 99-100.



At page 26 of Stickell's brief exception is taken to appellants' reference to the reason for Stickell's use of the rail-truck route via ~~El~~smere Junction (Wilmington), Delaware, and the suggestion is made that appellants have improperly injected this matter into the case. A witness offered by Stickell attributed the making of the rail-truck shipments to the poor rail service of the Pennsylvania from Hagerstown (R. 219) but admitted that this tonnage was transit tonnage "as far as ~~El~~smere" (R. 224). Since no through-routes are in effect over the Pennsylvania to Hagerstown and outbound over the Western Maryland and Reading to ~~El~~smere Junction, transit billing covering inbound shipments over the Pennsylvania to Hagerstown could not have been used on the rail-truck shipments to ~~El~~smere. Necessarily the only billing which could have been used was that which had been received at Hagerstown over the Western Maryland having been received by it from other connections. But the inbound billing on such grain was not eligible to support outbound shipments from Hagerstown over the Pennsylvania. See in this connection the footnote at page 100 of appellants' main brief.

The Government's argument (p. 52) that the comparison of efficiency under clause (b) may properly be limited to the portions of the proposed and existing routes *from Hagerstown* to destination, to the exclusion of any comparison of the proposed and existing routes in their entirety between points of origin and destination, will not square with the language and obvious intent of clause (b). Thus, the Government quotes the Court below (R. 98) as saying: " \* \* what Stickell is most concerned with is prompt delivery of its products." But for the reasons set forth in the foregoing Reply to Point I, as well as in appellants' main brief (pp. 31-33, 37-43), the Congress in enacting clause (b) was making paramount the general public interest rather than the possible advantage of an individual shipper or transit operator. The general public, which

ultimately bears the burden of uneconomical or wasteful transportation, and which ultimately secures the benefit of economic and efficient transportation, is obviously interested in the operating efficiency and economy of the proposed through routes *in their entirety* as compared with the existing routes.

The foregoing paragraph will also serve as a reply to that portion of Point II of Stickell's brief which appears at pages 30-31.

For answer to the remaining portions of the Government's brief under this point, appellants' respectfully refer to their main brief page 88 et seq.

Respectfully submitted,

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January 9, 1945.

**APPENDIX.**

Excerpt from Printed Hearings Before House Committee on Interstate and Foreign Commerce, 72nd Congress, 1st Session, on H.R. 7116 and 7117 (Pages 463-464).

“Mr. Huddleston. Mr. Eastman, in deciding upon what is a just and reasonable rate, does the commission consider the cost to the carrier of the service?”

“Commissioner Eastman. It does, whenever it has evidence in regard to that matter before it. That is difficult evidence to procure. In an increasing number of important cases it is submitted to the commission. Such evidence has been presented to the commission in an increasing number of cases. In the ordinary case of small scope, no evidence of that kind is presented. The usual evidence in such cases takes the form of rate comparisons, and rate comparisons have furnished the supporting evidence on both sides in the great majority of cases considered by the commission. But, as I say, in an increasing number of cases an attempt has been made to furnish studies of what the cost to furnish the particular service is. Now, that is a very difficult matter, and when such cost studies are presented, we find that, as a rule, they are criticized by both parties and very often the criticisms are valid.

“Mr. Huddleston. Is that factor included in any of the clauses in this proposed amendment that you have submitted?”

“Commissioner Eastman. Included in what?”

“Mr. Huddleston. Is that covered by any of the provisions of this proposed amendment?”

“Commissioner Eastman. Well, it is included in the expression ‘just and reasonable rates,’ and, of course, we are largely talking in this paragraph 2 about the general rate level. So far as a general rate level is concerned, the cost of service is reflected by the operating results of the carriers. It is clear as to what the cost of the entire service is. What we lack is the cost of the hauling of particular commodities or between particular points.

“Mr. Huddleston. The provision that ‘in the exercise of its power to prescribe just and reasonable rates’ seems to include fixing of particular rates as well as the general rate level.

“Commissioner Eastman. Yes, I think that that is true.

“Mr. Huddleston. My thought is that the ideal rate is a rate which covers the cost of service performed, plus whatever profit might be considered fair. Looking at this, it seems to me that that thought is altogether ignored.

“Commissioner Eastman. Well, of course, under the doctrine which has prevailed in the past, it is necessary to consider, not only cost of service, but value of service, and that means that some traffic will carry a greater part of the burden than other traffic. Under the decisions of the Supreme Court we can not require a railroad to carry any kind of traffic at less than cost, but I think we are at liberty to fix rates so that a greater amount of profit is obtained from certain forms of traffic than from other forms.

“Mr. Huddleston. And that other kinds of traffic may be carried at a loss?

“Commissioner Eastman. Not at a loss, under the decisions of the Supreme Court, if we know what the cost is.

“Now, as I say, when you get into the realm of cost, you are getting into a very difficult matter, and for this reason: When it comes to determining what the costs of carrying a particular kind of traffic are, or of carrying traffic between particular points, you have got to apportion a lot of items of expense which are incurred in common for a good many different forms of service, and these apportionments have to be made on a more or less arbitrary basis—that is where the dispute comes, as to whether those methods of apportioning expenses incurred in common for different kinds of service are reasonable methods of apportionment, and I assure you there is a tremendous opportunity for debate in regard to those matters.

“Mr. Huddleston. I have heard it said that in fixing the fundamental base of rates on which all rates are formed, practically, no attention has been given to the cost of the service.

“Commissioner Eastman. Well, I think the railroads have not attempted in general to determine what are the costs of hauling particular commodities, or traffic between particular points. I think that they do have various rule-of-thumb measurements in their mind which influence them in making rates. I know one particular road which has worked out some average ton-mile costs, and its traffic department is instructed in making rates to keep those average costs in mind and not to go below them without very careful consideration. A certain rule-of-thumb measurement of that kind I think is used, but it is quite true that there has not been an attempt to ascertain costs in the way in which many other industries at the present time attempt it, by means of a complete system of cost accounting.”









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# **In the Supreme Court of the United States**

OCTOBER TERM, 1944

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No. 182

THE PENNSYLVANIA RAILROAD COMPANY, ET AL.,  
APPELLANTS

*v.*

UNITED STATES OF AMERICA, INTERSTATE COM-  
MERCE COMMISSION, AND D. A. STICKELL & SONS,  
INC.

---

*ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF MARYLAND*

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**BRIEF FOR THE UNITED STATES AND THE INTERSTATE  
COMMERCE COMMISSION**

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## **OPINIONS BELOW**

The opinion of the United States District Court for the District of Maryland (R. 77-102) is reported in 54 F. Supp. 381. The report of the Interstate Commerce Commission (Division 2) (R. 27-41) appears in 255 I. C. C. 333.

## **JURISDICTION**

The final decree of the three-judge district court was entered March 22, 1944 (R. 102-103) and a stay pending appeal was issued on the same

day (R. 107-108). Petition for appeal was both presented and allowed on May 15, 1944 (R. 108-110). Jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219-221 (28 U. S. C. 47, 47a) and under Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (28 U. S. C. 345). Probable jurisdiction was noted on October 9, 1944 (R. 477).

#### QUESTIONS PRESENTED

The ultimate question concerns the validity of an order of the Interstate Commerce Commission dated March 18, 1943, under Section 15 (3) and Section 15 (4) (b) of Part I of the Interstate Commerce Act (49 U. S. C. 15 (3) and 15 (4) (b)). This order requires the establishment by various rail carriers, including appellants, of certain additional through routes and joint rates<sup>1</sup> applicable

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<sup>1</sup> "Through routes" and "joint rates" were defined in *St. L. S. W. Ry. Co. v. United States*, 245 U. S. 136, 139, as follows:

A "through route" is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. Through carriage implies a "through rate." This "through rate" is not necessarily a "joint rate". It may be merely an aggregation of separate rates fixed independently by the several carriers forming the "through route"; as where the "through rate" is "the sum of the locals" on the several connecting lines or is the sum of lower rates otherwise separately established by them for

thereto on shipments of grain and grain products moving from various midwestern points through Hagerstown, Maryland, to eastern destinations on the Pennsylvania Railroad, particularly those on the so-called Del-Mar-Va Peninsula<sup>2</sup> hereinafter referred to as the Peninsula.

Subordinate questions are:

1. Whether Section 15 (4) (b) of the Interstate Commerce Act is to be construed as authorizing the Commission to prescribe a through route depriving a carrier of its long haul between two points if the Commission finds that such route is needed to provide "adequate, and more efficient or more economic, transportation" from the standpoint of service to the shipping public, or only if it finds that such route will promote adequate, economic and efficient transportation from the standpoint of railroad operating costs and operating conditions.

2. Whether the Commission was justified under Section 15 (4) (b), upon complaint of a shipper, in comparing conditions on the proposed through routes not with conditions on the Pennsylvania Railroad's direct route to the East, but rather

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through transportation. *Through Routes and Through Rates*, 12 I. C. C. 163, 166. Ordinarily "through rates" lower than "the sum of the locals" are "joint rates." \* \* \*

<sup>2</sup>The Del-Mar-Va Peninsula is that part of Delaware, Maryland and Virginia lying south of Wilmington, Delaware, and between the Chesapeake and Delaware Bays (R. 78).



with the conditions on its route to the East actually serving complainant.

3. Whether the Commission's order is supported by adequate findings and substantial evidence.

#### STATUTE INVOLVED

The pertinent provisions of Part I of the Interstate Commerce Act are reproduced in Appendix A, *infra*, pp. 59-62.

#### STATEMENT

The present report and order of the Interstate Commerce Commission were issued after hearing upon a complaint against various railroads, filed with that body by appellee D. A. Stickell & Sons (hereinafter referred to as Stickell), of Hagerstown, Maryland (R. 22-26). As amended at the hearing,<sup>3</sup> the complaint alleged

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<sup>3</sup> The complaint, as originally filed, sought through routes via Hagerstown to "points in Trunk Line and New England territories", and the Baltimore and Ohio Railroad Company was named as one of the defendants (R. 24, 22). The complaint was amended at the hearing in order to narrow the relief sought to through routes at the present joint rates to the described destinations on the Pennsylvania. The transit rate and restricted routing situations on the Baltimore and Ohio are substantially similar to those on the Pennsylvania, and the former railroad feared that if the relief sought should be granted, a precedent would be established that would directly affect its interests. Accordingly, it introduced considerable evidence and otherwise participated in the proceedings before the Commission and district court (R. 27-28, 4) and is a co-appellant here (R. 108, 477).

that Stickell was denied reasonable through routes and joint rates on grain, grain products, and by-products moving from points in Ohio, Indiana, Illinois, Wisconsin, Iowa, Minnesota, Missouri, and Omaha, Nebraska, to Hagerstown, there mixed into livestock and poultry food, and the manufactured product reshipped to destinations on the Pennsylvania Railroad Company (hereinafter referred to as the Pennsylvania) east of York, Pennsylvania and Fulton Junction (Baltimore), Maryland, and between New York City and Cape Charles, Virginia, and particularly to destinations in the Del-Mar-Va Peninsula (R. 27-28). This complaint asked the Commission to exercise its power under Section 15 (3) of the Interstate Commerce Act to prescribe reasonable and non-prejudicial through routes and joint rates (R. 22-26).

From the Commission's report, the following facts appear:

Stickell manufactures livestock and poultry feed at Hagerstown, Maryland, by milling and mixing grain and poultry products obtained principally from points in the Midwest. About 10 percent of the materials used by it move inbound and out-bound by truck and 90 percent move by rail. The bulk of its production moves to points in New England, eastern Pennsylvania, Delaware, and the Del-Mar-Va Peninsula. About 50 or 60 percent of its production and about 90

percent of that part thereof that is handled by the Pennsylvania move to points in the Peninsula. The Pennsylvania is the only railroad serving those Peninsula points. (R. 28.)

Hagerstown is served by four railroads, including the Western Maryland Railroad and the Pennsylvania. It is situated 74.5 miles southwest of Harrisburg, Pennsylvania, on a branch line of the Pennsylvania, extending from that main-line point to Winchester, Virginia. The carriers, including the Pennsylvania, maintain joint through rates on grain and grain products from origins in central territory<sup>4</sup> and from the market points, Chicago, East St. Louis and Cairo, Illinois, and St. Louis, Missouri, to all points in trunk-line territory.<sup>5</sup> These rates are restricted, however, by the carriers to apply only over certain routes. For example, they do not apply on grain traffic originating in central territory destined to points on the Pennsylvania unless that railroad receives the traffic at or west of Pittsburgh, Pennsylvania, its western terminus in trunk-line territory. When the Pennsylvania has possession of such traffic consigned to destinations on certain other railroads it will interchange

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<sup>4</sup> Central territory is roughly that territory west of Buffalo and Pittsburgh, north of the Ohio River, east of Chicago and St. Louis, and south of the Great Lakes (R. 78).

<sup>5</sup> Trunk-line territory is roughly that territory east of central territory, west of New England, and north of the Potomac River (R. 78).

with them at certain points. (R. 29.) However, no intermediate interchange with other carriers for final destinations on the Pennsylvania's own lines is provided, so that for traffic destined to points on the Pennsylvania to receive the through rates it must be carried exclusively on the Pennsylvania's rails from at least Pittsburgh all the way east (see R. 29). The Pennsylvania, for a transit charge in addition to the through rates, also maintains a transit privilege at Hagerstown, under which a shipper such as Stickell receives the through rate on grain and grain products from the origin of the grain to the destination of the product, despite the stoppage of the grain in transit for processing (see R. 28, 29, 30, 33). This privilege is also restricted by the Pennsylvania so that it applies only to traffic originated by it at or west of Pittsburgh, its western terminus in trunk-line territory, or received by it from its connections west of that terminus. However, the Pennsylvania route through Hagerstown involves an out-of-line haul, from its main line at Enola Yard (Harrisburg) to Hagerstown and return, of 149 miles.<sup>6</sup> For this out-of-line service

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<sup>6</sup> The Pennsylvania's route from Chicago, as a representative origin point, through Hagerstown to the Peninsula, is shown on the map set forth in Appendix B (*infra*, p. 63). Under the tariff restrictions, in order for Stickell now to secure the through rates it must ship over the main line of the Pennsylvania from Chicago to Harrisburg, or at least over that part of such main line between Pittsburgh and Harrisburg, then back to Hagerstown over the branch line of the

the Pennsylvania imposes a charge of 4.5 cents per 100 pounds in addition to the through rates and the transit charge. Thus, in order for Stickell to reach the destinations here in issue it must pay 90 cents per ton in addition to the through rates and the transit charge. Its plant is on the tracks of the Western Maryland, but the Pennsylvania absorbs the Western Maryland's switching charge of \$6.93 per car each way. (R. 30.)

Stickell did not assail the reasonableness of the through rates, the out-of-line charge or the transit charge (R. 30). Its position was that it should not be required to pay an out-of-line haul charge in order that the Pennsylvania might obtain the long hauls from its western termini in trunk-line territory. It desired establishment of the present joint through rates over two through routes, hereinafter referred to as routes 1 and 2 (set forth in the map appearing in Appendix B *infra*, p. 63) to destinations on the Pennsylvania; (1) over route 1, from the markets and origins in central territory on the New York Central Railroad Company and its connections other than the Pennsylvania via the New York Central to Youngstown, Ohio, thence via the Pittsburgh & Lake Erie to Connellsville, Pennsylvania, thence via the Western Maryland to Hagerstown, thence via the Western Maryland to York, Pennsylvania,

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Pennsylvania, then back to Harrisburg over the same track, then over the Pennsylvania's lines east to the Peninsula points (R. 29, 30).



or Fulton Junction (Baltimore), Maryland, and thence via the Pennsylvania to the Del-Mar-Va destinations; and (2) over route 2, from the same markets and origins on the Wabash Railway Company and its connections other than the Pennsylvania in central territory via the Wabash to Toledo, Ohio, thence via the Wheeling and Lake Erie Railway Company to Pittsburgh Junction, Ohio, thence via the Pittsburgh & West Virginia to Connellsville, thence via the same route as indicated in route 1 to the Del-Mar-Va destinations. (R. 31.) The joint rates now apply over these routes up to Hagerstown with transit at that point, thence via Western Maryland to destinations on that railroad, and from Hagerstown over the Western Maryland to Shippensburg, Pennsylvania, and numerous connecting railroads beyond (*ibid.*), including the Reading but not including the Pennsylvania (see R. 29-30).

As required under Section 15 (3) of the Interstate Commerce Act in order for it to establish joint rates and through routes, the Commission concluded that the routes sought by Stickell were necessary and desirable in the public interest (R. 34, 41). In support of this conclusion the Commission made the following subordinate findings (R. 32-33):

It is not the province of railroads to determine what markets shall be available to sellers or buyers, or, by the refusal to establish through routes or the maintenance

of rate disadvantages, to restrict or circumscribe the opportunities of shippers located on other railroads to sell in markets served by them. It is their function to transport in the channels necessitated by trade conditions and not to fix limitations on commerce. The public interest demands that all shippers be accorded relatively equal opportunities to reach all reasonably available markets. The margin of profit on complainant's products is small. The two principal items entering into the selling price are the amounts paid for the materials and freight charges. Feed manufacturers at the rate-break points, and at Buffalo, N. Y., Fort Wayne and Indianapolis, Ind., Cincinnati, Toledo, Cleveland, and Akron, Ohio, and Pittsburgh, Lancaster, and York, Pa., can reach the destinations here considered at the through rates, but complainant, on grain purchased at the same origins when the Pennsylvania gets the in-bound haul from or beyond its trunk-line western termini, must pay 90 cents a ton more, or, when other carriers perform the in-bound haul, combination rates.<sup>7</sup> Clearly complainant is at a disadvantage.

\* \* \* \* \*

The routes sought up to Hagerstown are well established and generally accepted as reasonable by shippers and the carriers parties thereto to points in eastern terri-

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<sup>7</sup> Such combination rates would be higher than the through joint rates.

tory. There is no showing or contention that those routes would be less economical as parts of the through routes sought to destinations considered on the Pennsylvania than to destinations on the other carriers in eastern territory. The routes sought in connection with the Pennsylvania would not only not result in any cross hauling or wasteful transportation but they would eliminate a 149-mile out-of-line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown. The Western Maryland would bear all the transit and switching expenses at that point.

The Commission considered whether the proposed routes would require any participating carrier, without its consent, to embrace in such routes substantially less than the entire length of its railroad lying between the termini of such proposed routes. Section 15 (4) of the Interstate Commerce Act (Appendix A, *infra*, pp. 61-62) forbids the Commission to "short-haul" a carrier in this fashion without its consent unless the Commission finds: (a) that "such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established," or (b) "that the through route proposed to be established is needed in order to provide adequate, and

more efficient or more economic, transportation." The Commission stated that the Pennsylvania was the only carrier that would participate in these proposed routes which invoked the above short-hauling restriction of Section 15 (4), and that the carriers participating in these routes west of Hagerstown would receive the same hauls they now receive on traffic via Hagerstown to destinations in trunk-line territory (R. 35). It is obvious therefore that though the carriers participating west of Hagerstown, with the exception of the Western Maryland and the Pittsburgh & West Virginia, are appellants here, they are not deleteriously affected by the Commission's present order. This restriction against short-hauling a carrier was found to be applicable to the Pennsylvania inasmuch as the distance by the lines of that carrier over its present tariff route between Chicago and Salisbury, Maryland, using those points respectively as a representative origin and a representative destination, was 902 miles,\* whereas the distance over route 1 via Fulton Junction (Baltimore) was 946 miles and via York 958 miles, and over route 2 via Fulton Junc-

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\* This figure does not, of course, include the round trip 149-mile out-of-line haul between Harrisburg and Hagerstown, on traffic moving from Chicago to Salisbury via Hagerstown, as Stickell's does (R. 30, 32-33). Stickell's traffic currently moves 1,051 miles (the 149-mile out-of-line haul plus the 902-mile route between Chicago and Salisbury, Maryland), which is longer than the total haul by way of either of the proposed routes (R. 34).

tion 938 miles and via York 950 miles. (R. 34.) The Commission concluded that the Pennsylvania's direct route was not unreasonably long (*ibid.*), so that subsection (a) of Section 15 (4) could not be invoked to deprive the Pennsylvania of its long haul. The Commission did, however, invoke (R. 35-41) subsection (b) of Section 15 (4) in order to prescribe these routes short-hauling the Pennsylvania, making the following ultimate finding as required under the statute (R. 41) :

We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola Yard near Harrisburg.

Just as it now urges (Br. 28-68), the Pennsylvania urged below and before the Commission that the phrase "adequate, and more efficient or more economic, transportation" in Section 15 (4) (b) has reference solely to the adequacy, economy and efficiency of transportation from the standpoint of railroad operating conditions and operating costs, and not to the adequacy, efficiency and economy of transportation service from the stand-



point of the shipping public. This contention was rejected by the Commission with this statement (R. 39-40):

Prior to the amendment of Section 15 (4) [by the Transportation Act of 1940, 54 Stat. 899, 911], the Commission's power to prescribe through all-rail routes which would short haul any carrier participating therein without its consent was limited to instances where the inclusion of the entire length of its railroad between the termini of such route would make the through route unreasonably long as compared with another practicable route which could otherwise be established. While that section limited the powers of the Commission, it left it entirely within the discretion of the carrier as to whether it would insist upon its long hauls. It was at liberty to voluntarily join in any route which it believed to be more adequate, efficient, and economical than a route embracing its entire line, although the latter route might not be unreasonably long. Therefore no exception to the restriction on the Commission's power was necessary to protect the carriers' interests.

As to the shippers, however, a different situation existed. It rests within the power of carriers by insistence on their long hauls to place localities and shippers on the lines of other carriers or not on their direct lines at severe rate and competitive disadvantages and, as in the instant case, to

deprive shippers of relatively equal opportunities to compete in markets served only by them. Carriers in many instances availed themselves of the right to their long haul, and the disadvantaged localities and shippers had no redress. It was to remedy that situation, apparently, that the second exception was added. The Commission was thereby given authority, when it finds that through routes are "needed in order to provide adequate and more efficient or adequate and more economic transportation," to require the establishment of such routes although they may short haul one or more of the participating carriers. We interpret that exception to mean adequate and more efficient and more economic from the public's or shippers' as well as the participating carriers' standpoint. That such was the intent of the Congress is evident from the conditions the amendment was apparently designed to correct, from the fact that in the added proviso even the preference to be accorded the originating carrier is made subservient to the public interest, from both limitations on the right of a carrier to retain its long haul, and from the fact that the Congress specifically provided that, as between carriers, "No through route or joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs."

The Commission, having interpreted this exception to mean adequate and more efficient from the public's or shippers', as well as the participating carriers', standpoint, made the following subordinate findings (R. 36, 40) from the standpoint of the shipper, with respect to the adequacy, efficiency and economy of the service over the present route and over the proposed additional routes and in support of its ultimate finding quoted above (p. 13):

Complainant does not question the adequacy, efficiency, or economy of the Pennsylvania service over its direct routes but only over its route via Hagerstown. As to the latter, it contends the routes sought would be more adequate, efficient, and economic from the shipper's standpoint. Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, on the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning, and on information received from the Western Maryland, complainant estimates that it would save 2 days in reaching destinations in the Del-Mar-Va peninsula if the routes sought were established. Its experience shows that it takes 1 day each way between Harrisburg and Hagerstown and 1 day for each interchange between the Western Maryland and Pennsylvania at Hagerstown, making a total of

4 days required for the out-of-line service, and that it takes an average of 3 to 4 days for the movement of a car from its plant to destinations on the Del-Mar-Va peninsula.

\* \* \* \* \*

That the present route is not as adequate and efficient as the routes sought, so far as the shipper is concerned, is evidenced by the fact that, in order to meet the demands of customers for prompt delivery, complainant shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction thence by truck to points on the Del-Mar-Va peninsula.<sup>9</sup> The fact that the proposed routes would be more economical to the shipper is shown by the fact that the saving in transportation charges would be 4.5 cents per 100 pounds on all grain and grain products moving over those routes and transited at Hagerstown, as compared with the charges over routes of the Pennsylvania via Enola yard [near Harrisburg, Pennsylvania] heretofore described.

An order (R. 41-43) to carry out the finding in the report of Division 2 of the Commission was entered by that Division on March 18, 1943, the same day as its report was issued. This order directed the railroads, defendants before the

<sup>9</sup> This shipment occurred in 1940 via the Western Maryland to Shippensburg, Pennsylvania, thence via the Reading to Elsmere Junction (Wilmington), Delaware (R. 28).

Commission, including the appellants here, to establish and maintain joint rates on grain, grain products and by-products taking the same rates as grain, in carloads from (a) points on the lines of the New York Central Railroad Company and the Wabash Railway Company and their connections other than the Pennsylvania in Ohio, Indiana, and Illinois, and (b) the market points of St. Louis, Missouri, and Chicago, East St. Louis and Cairo, Illinois, when originating beyond those market points, over routes (1) and (2) (described *supra* pp. 8-9) through Hagerstown to destinations on the lines of the Pennsylvania east of York and Fulton Junction (Baltimore) and between New York City and Cape Charles, Virginia. It further directed that such joint rates should not exceed the lowest through rates contemporaneously maintained on like traffic from the same origins to those destinations over the direct route of the Pennsylvania or over routes in which it is a participating carrier via its Enola Yard near Harrisburg.

Appellants' petition for reconsideration (R. 126-181) having been denied by the full Commission on October 4, 1943 (R. 198), they sued the United States on November 4, 1943, in the United States District Court for the District of Maryland, to set aside the Commission's order of March 18, 1943 (R. 3-21). The Commission and Stickell intervened as defendants (R. 44, 53, 54).



Final hearing was held before a specially constituted three-judge court on January 26, 1944 (R. 72). A certified copy of the oral testimony and documentary exhibits introduced in the proceedings before the Commission was received in evidence by the court (R. 76). On March 2, 1944, the court filed a written opinion (R. 77-102) and on March 22, 1944, a final decree dismissing the complaint was entered (R. 102-103).

#### SUMMARY OF ARGUMENT

##### I

A. The Commission's construction of Section 15 (4) (b) of the Interstate Commerce Act as referring to the adequacy, economy and efficiency of transportation from the standpoint of the shipping public as well as from the standpoint of railroad operating conditions and operating costs is supported by the language of the Section. This Section, added by the Transportation Act of 1940, can have reasonable meaning from either standpoint, and the word "transportation", whether construed in accordance with the general definition of that term in the Act, or in accordance with the more literal meaning, obviously has reference as much to the transportation service received by the shippers as to that furnished by the carriers. Actually Congress must have used this language more from the shippers' than from the carriers' standpoint, since there was more need to give

the Commission power to prescribe routes short-hauling a carrier when that would provide adequate and more efficient or more economic transportation from the shippers' standpoint than when it would provide such from the carriers' standpoint. Thus a carrier would naturally voluntarily waive its long-haul rights as to a route considered more advantageous from its standpoint, making the Commission's intervention unnecessary. But where the route was only more advantageous to shippers the carriers would very likely refuse to consent to being short-hauled, and the shippers would be powerless to secure such advantages unless the Commission was given the power to compel the carrier to accept such routes. The phraseology was adopted from language used by Congress earlier in Section 15 (a) (2) of the Act, as amended by the Emergency Transportation Act of 1933, and by this Court earlier in explaining the phrase "public interest" as used in Section 5 of the Act. As there used it was clear that Congress and this Court had reference to the adequacy, economy and efficiency of transportation from the shippers' as well as the carriers' standpoint, and it is reasonable to assume that Congress intended the same meaning to be given this language when it was reiterated here in slightly abbreviated form.

B. The Commission's construction is also supported by the legislative history of Section 15 (4)

(b). That Section, as finally passed in the Transportation Act of 1940, was a compromise between a Senate bill which would have removed the short-haul restriction entirely and a House bill which would have left the restriction completely intact. The Senate provision stemmed from several earlier independent through-route bills which also had sought to remove this restriction entirely. Such bills were introduced on the recommendation of the Commission to modify the interpretation placed on the short-haul restriction of Section 15 (4) by this Court in *United States v. Missouri Pacific R. Co.*, 278 U. S. 269 (the *Subiaco* case). In making its recommendation the Commission was clearly concerned with the situation from the shippers' as well as the carriers' standpoint. The hearings and the Committee reports on the earlier bills, and the subsequent debate in the Senate on the original Senate version of the Transportation Act of 1940, reveal that shippers were strongly supporting such legislation and that the Senate was keenly concerned with their interest. To construe the language finally adopted in the compromise as referring solely to adequacy, economy and efficiency of transportation from the standpoint of railroad operation would be to conclude that this compromise netted shippers practically nothing. Yet it is unthinkable that in the compromise all Congressional desire to help the shippers, so strongly manifest in the earlier pro-

ceedings, would so suddenly have abated. A much more plausible view of the compromise, one which does not disregard entirely the interests of shippers or carriers, is that the Commission was empowered by the compromise to short-haul carriers when that was necessary to provide adequate and more efficient or more economic transportation for the shippers, but that in return the carriers were to be protected against the prescription of through routes "for the purpose of assisting any carrier that would participate therein to meet its financial needs." This conclusion is strengthened by the fact that the carriers had opposed the complete removal of the short-haul restriction primarily because they feared that with the restriction removed, the Commission might be empowered to prescribe through routes to aid financially needy short-line carriers as it had earlier sought to do. This construction gains further support from the fact that the words "adequate and efficient transportation", finally chosen, had been used from the shippers' standpoint at a Congressional committee hearing on one of the through-route bills by a witness representing shippers.

## II

The Commission properly construed Section 15 (4) as permitting it to compare the proposed through routes not with Pennsylvania's direct route but with its route through Hagerstown.

Appellants' contention to the contrary is not supported by the fact that the short-haul restriction in this Section provides that the Commission shall not require any carrier by railroad to embrace in a proposed through route substantially less than the entire length of its railroad which lies between the termini of such proposed route. The phrase "between the termini" is not found in the exception to the restriction set forth in subsection (b). In any event it means only that a carrier's long haul, subject to protection, embraces the total length of its line between the termini and not just the length of its line after it has obtained possession of traffic under a prescribed through route. It would be impossible for the Commission on the complaint of a Hagerstown shipper to determine under exception (b) whether a proposed route through Hagerstown would be "more efficient or more economic," either from the standpoint of service to the shipper or from the standpoint of railroad operation, if it did not compare conditions over such route with conditions over existing routes actually available to the Hagerstown shipper. The construction advanced by appellants seems so unreasonable that it must be rejected even if it were required by the literal language, which it is not. *United States v. American Trucking Associations*, 310 U. S. 534, 543.



## III

If the Commission properly construed Section 15 (4) (b), it follows that its ultimate conclusion that the "two routes sought are needed to provide adequate and more efficient and adequate and more economical transportation" is supported by adequate subordinate findings and substantial evidence. That the present service is not adequate is indicated by the Commission's finding that in order to meet the demands of its customers for prompt delivery, instead of being able to employ Pennsylvania's all-rail service, Stickell had shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction (Wilmington), thence by truck to points on the Peninsula. That the proposed routes would offer more efficient service from the shippers' standpoint is indicated by the Commission's statement that Stickell estimated that it would save 2 days in reaching destinations in the Peninsula if the routes sought were established. Finally, it is plain that the proposed routes would be more economical to the shipper from the Commission's finding that they would result in saving the Pennsylvania's out-of-line charge of 4.5 cents per 100 pounds. These findings afford a rational basis for the Commission's ultimate conclusion and they are supported by substantial evidence. The question of what is needed to provide adequate and more efficient or more economic transportation is one of those nu-

merous factual questions entrusted to the Commission's informed judgment, whose conclusion with respect thereto is binding upon the courts if supported by a rational basis and substantial evidence. *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 145-146; *Barringer & Co. v. United States*, 319 U. S. 1, 6-7.

### ARGUMENT

## I

THE COMMISSION PROPERLY CONSTRUED SECTION 15

(4) (b) AS REFERRING TO ADEQUACY, ECONOMY AND EFFICIENCY OF TRANSPORTATION FROM THE STANDPOINT OF THE SHIPPING PUBLIC AS WELL AS FROM THE STANDPOINT OF RAILROAD OPERATING CONDITIONS AND OPERATING COSTS

#### A. THE LANGUAGE OF SECTION 15 (4) (b) SUPPORTS THE COMMISSION'S CONSTRUCTION

Section 15 (3) of Part I of the Interstate Commerce Act authorizes the Commission to establish joint rates and through routes "when-ever deemed by it to be necessary or desirable in the public interest." But Section 15 (4), as amended by the Transportation Act of 1940 (54 Stat. 899, 911), provides that in establishing such through routes a carrier shall not be short-hauled without its consent—

(b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and

more efficient or more economic, transportation: *Provided*, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.

On its face, the phrase "needed in order to provide adequate, and more efficient or more economic, transportation" contains no words indicating that, as appellants urge (Br. 28-72), it is to be construed solely from the carriers' physical operating standpoint rather than from the standpoint of service to the shipping public, and the phrase can have reasonable meaning as considered from either standpoint. In fact, it appears that Congress must have used this language more from the shippers' standpoint than from the carriers'. Thus, the Commission's report points out (R. 39-40) that no exception to the restriction against short-hauling was necessary to insure through routes which would be more efficient and economic from the railroads' operating standpoint. This is because such restriction, by its terms, applies only to short-

hauling a carrier "without its consent," and a carrier could voluntarily consent to being short-hauled when the result would be a through route providing more efficient and economic operation from its standpoint, making an order by the Commission under the exception provision in the carrier's behalf unnecessary. On the other hand, an order by the Commission under the exception provision would, in many cases, be necessary to provide adequate and more efficient or economic transportation service, from the shippers' standpoint, where a carrier would not consent to being short-hauled because its own interests might be countervailing.

Appellants, however, assert (Br. 31) that if the general definition of "transportation" contained in Section 1 (3) (a) of the Act is applied to that word in Section 15 (4) (b), then "transportation," as used in the latter Section, must be considered as having reference solely to the physical operations conducted by the carrier. The definition in Section 1 (3) (a) reads as follows:

The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigera-

tion or icing, storage, and handling of property transported.

Not only does this definition not purport to be all-inclusive, but it is evident from the latter part that "transportation", as there used, is to be construed as "transportation service". If this definition is applied to "transportation" as used in Section 15 (4) (b), the Commission was certainly justified in construing that Section from the shippers' as well as the carriers' standpoint, for the word "service" connotes that which is received as well as that which is given. Thus, Webster's New International Dictionary (2d ed., 1935) states that service may mean "anything supplied for accommodation" such as "work \* \* \* done to meet the needs of customers" or "a scheduled accommodation for transportation". On the other hand, the Commission's construction was equally justified if "transportation" is given its common meaning, for the same dictionary defines that word as "the act of transporting, or state of being transported."

It is evident, too, as the district court observed (R. 90), that Congress in Section 15 (4) (b) was only repeating, in somewhat abbreviated form, language first used by it in Section 15 (a) (2) of the Interstate Commerce Act, as amended by the Emergency Transportation Act of 1933 (48 Stat. 211, 220). This language was as follows:



In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, \* \* \* to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.

This language was reiterated in Section 15 (a) (2), as amended by the Transportation Act of 1940 (54 Stat. 898, 912). There can be no doubt of the meaning of the above language, since, in view of the use of the phrase "need, in the public interest" and the words "transportation service," it was plain that the Commission was to consider the needs of both the shipping public and the carriers. The phraseology of Section 15 (4) (b), for present purposes, differs from the pertinent language of Section 15 (a) (2) only in that while it speaks of a through route "needed," it does not qualify that word by the phrase "in the public interest," and it does not use the word "service" after "transportation." But Section 15 (4) (b) immediately follows Section 15 (3) and is to be construed in connection with that Section,<sup>10</sup> which speaks of through routes "necessary or desirable

<sup>10</sup> The opening clause of Section 15 (4), "In establishing any such through route," would be meaningless without reference to Section 15 (3).

in the public interest," so that it is evident that Congress used the word "needed" in Section 15 (4) (b) as if qualified by the same phrase "in the public interest." That Congress had in mind generally the "public interest" in Section 15 (4) (b) is also apparent from the fact that in the proviso to that Section it provided that the Commission, "consistent with the public interest," should give reasonable preference to the carrier originating the traffic. And, as has been indicated above, the word "transportation," standing alone, is the equivalent of "transportation service." Therefore, it is logical to conclude that when Congress used this similar but abbreviated language in Section 15 (4) (b) it did so with the intention that such language, like that in Section 15 (a) (2), was to be construed as requiring the Commission to consider the needs of the shipping public.

The language in Section 15 (4) (b) seems also to have been adopted from the language used by this Court on several occasions in construing the term "public interest" in Section 5 of the Interstate Commerce Act, as successively amended by the Transportation Act of 1920, the Emergency Transportation Act of 1933, and the Transportation Act of 1940. For example, in *New York Central Securities Co. v. United States*, 287 U. S. 12, 24-25, in referring to the criterion of "public interest" as used in that Section, whereby consolidations of carriers are permitted when the

Commission finds them to be in the public interest, the Court said:

Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the "public interest". It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of the Act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service \* \* \* \* The provisions now before us were among the additions made by Transportation Act, 1920, and the term "public interest" as thus used is not a concept without ascertainable criteria, but has directed relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred.

The language of this opinion has been adopted and quoted in several later decisions dealing with the phrase "public interest" used in the same

Section, as amended by subsequent Acts. *Texas v. United States*, 292 U. S. 522, 531; *United States v. Lowden*, 308 U. S. 225, 230; *McLean Trucking Co. v. United States*, 321 U. S. 67, 80-81. The following segment of the *McLean Trucking Co.* opinion is relevant:

The national transportation policy is the product of a long history of trial and error by Congress in attempting to regulate the nation's transportation facilities beginning with the Interstate Commerce Act of 1887. For present purposes it is not necessary to trace the history of those attempts in detail other than to note that the Transportation Act of 1920 marked a sharp change in the policies and objectives embodied in those efforts. "Theretofores, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates"; and emphasis on the preservation of free competition among carriers was part of that effort. The Act of 1920 added "a new and important object to previous interstate commerce legislation." It sought "affirmatively to build up a system of railways prepared to handle promptly the interstate traffic of the country." \* \* \* And in administering it, the Commission was to be guided primarily by consideration for "adequacy of transportation service, \* \* \* its essential conditions of economy and efficiency, and \* \* \* appropriate provi-

vision and best use of transportation facilities. \* \* \*” *New York Central Securities Corp. v. United States*, 287 U. S. 12, 25.

The Court in these decisions had reference to adequacy, economy and efficiency of transportation from the shippers' standpoint, in view of its use of the word "service" after "transportation." And while it also apparently had reference to adequacy, economy and efficiency of transportation from the carriers' standpoint, it obviously did not believe that such words, as there used, were to be considered solely in that light. Thus it took pains to insure that the carriers' interests would be protected by the use of the additional specific language "appropriate provision and best use of transportation facilities," which would have been unnecessary if the preceding words, "adequacy, economy and efficiency" were intended to be construed solely from the carriers' viewpoint. The importance of the language of these cases here is emphasized by the fact that it was used by the Court in defining "public interest". It has already been shown that the same term is used in Section 15 (3) which Section 15 (4) (b) qualifies, and that Congress otherwise had in mind the public interest in the latter Section, as indicated by the proviso thereof with respect to the preference of an originating carrier. And again, although this Court in the foregoing passages was speaking with respect to



“transportation service” rather than with respect to “transportation”, it has been demonstrated above that the two may be regarded as synonymous. Consequently, it is reasonable to suppose that Congress in the language employed in Section 15 (4) (b) meant the same thing as this Court meant in the similar language employed in the above decisions.

It is significant too that the declaration of transportation policy set forth in the Transportation Act of 1940 (49 U. S. C. 1) states that it is the Congressional policy, among other things “to promote safe, adequate \* \* \* and efficient service,” and further requires that “all of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.” This provision bolsters the conclusion that the Commission in Section 15 (4) must consider the adequacy, economy and efficiency of transportation (service), and it has been established that service connotes that which is received as well as that which is furnished.

This construction of Section 15 (4) adopted by the Commission does not, as the carriers urge (Br. 34-37), have the effect of vitiating the restriction on short-hauling. It does not mean that the Commission may short-haul a carrier every time that will result in adequate and more efficient and economic transportation from the standpoint alone of the shipping public. As the district court pointed out in this connection (R. 93):

Under the construction which we give to clause (b), even if the shipper is able to prove that the proposed new route would give him more efficient or more economic transportation,—better (as for example quicker) or cheaper service,—since, by the express language of paragraph (3) of Section 15, the Commission may never establish a through route unless “deemed by it to be necessary or desirable in the public interest”, we have no doubt but that this language, fairly interpreted, must be taken to include also considerations of railroad operating efficiency and economy, which, in a given case, may control over considerations in the shipper’s favor.

This construction does not mean that Section 15 (4) will add no protection to a carrier’s long-haul rights which is not already provided by Section 15 (3). For instance, it might well be in the public interest, and thus permissible under Section 15 (3), for the Commission to aid a weak short-line carrier by prescribing a through route for its benefit which short-hauled another carrier. That, in fact, was what the Commission endeavored to do in *Fort Smith S. & R. I. R. Co. v. A. & V. Ry.*, 107 I. C. C. 523, 524 (known as the *Subiaco* case), but such action might not result in “adequate, and more efficient or more economic, transportation” from either the carrier’s or the shipper’s standpoint, and accordingly might not be permitted under Section 15 (4). Further-

more such action by the Commission is specifically forbidden by other language of Section 15 (4).

Finally, the Commission's construction of this statutory provision is entitled to much weight, especially where it is a contemporaneous construction by the administrative agency entrusted with the responsibility of setting the machinery of a new Act in motion, and where the Commission had much to do (see *infra*, pp. 39, 44) with the provision's enactment. *Gray v. Powell*, 314 U. S. 402; *United States v. American Truckers Association*, 310 U. S. 534, 549. The Transportation Act of 1940 is a broad remedial Act which must be liberally construed and whose restrictions (as in Section 15 (4)) must be strictly construed. *Piedmont and Northern Ry. v. Interstate Commerce Commission*, 286 U. S. 299, 311-312; *McDonald v. Thompson*, 305 U. S. 263, 266; *Gregg Cartage and Storage Co. v. United States*, 316 U. S. 74, 83.

B. THE LEGISLATIVE HISTORY OF SECTION 15 (4) (b) SUPPORTS  
THE COMMISSION'S CONSTRUCTION

As amended by the Transportation Act of 1920 (41 Stat. 474, 485), Section 15 (3) of the Interstate Commerce Act gives the Commission its present-day power to prescribe through routes and joint rates, "whenever deemed by it to be necessary or desirable in the public interest." The same Act (41 Stat. 474, 486) adopted in Section 15 (4) a restriction against short-hauling substantially like that in this Section today, ex-

cept that the provision then enacted did not contain the language now found in Section 15 (4) (b). In construing the language of Section 15 (4), the Commission ruled that the short-haul restriction protected the long-haul of the originating carrier or a subsequent carrier only with respect to the length of its lines after it had once obtained possession of the traffic, and not with respect to the total length lying between the particular termini. *E. g., Waverly Oil Works v. P. R. R. Co.*, 28 I. C. C. 621, 630-631; *Fort Smith S. & R. I. R. Co. v. A. & V. Ry.* (the *Subiaco* case), 107 I. C. C. 523, 524. In the latter case, the Commission compelled the Missouri Pacific Railroad to join with a short-line carrier in a through route which embraced substantially less than the entire length of the former's railroad lying between the termini involved, solely to meet the financial necessities of the short-line carrier. Subsequently this Court set aside this order on the ground that Section 15 (4) must be construed according to its terms, and, as so construed, meant that the long-haul, subject to protection, embraced the total length of a carrier's line between the termini, and not just the length of its lines after it had obtained possession of the traffic under the prescribed through route. *United States v. Missouri Pacific R. Co.*, 278 U. S. 269 (also known as the *Subiaco* case). The Court remarked (pp. 277-278) that "Inconvenience or hardships, if

any, that result from following the statute as written must be relieved by legislation."

Prior to this Court's decision in the *Subiaco* case, Stickell had brought a complaint substantially like the present one, in which the Commission was asked to prescribe several routes including one to points on the Pennsylvania identical with Route 1 in the present case. The Commission, construing Section 15 (4) as it had done in the *Subiaco* case, first held that such route would not short-haul the Pennsylvania, and directed the carriers to adopt this new route. *Stickell & Sons v. Western M. Ry. Co.*, 146 I. C. C. 609, 613-614, 617-618. However, after further hearing, and in deference to this Court's subsequent decision in the *Subiaco* case, the Commission later found that the proposed routes would short-haul the carriers, including the Pennsylvania, under Section 15 (4). Since it further found that the exemption, allowing short-hauling when the existing routes are unreasonably long as compared to those proposed, was not applicable, it dismissed the complaint. *Stickell & Sons v. Western M. Ry. Co.*, 153 I. C. C. 759. In so doing, however, the Commission declared (p. 765):

It is probable, indeed, that the construction placed by the Supreme Court upon section 15 (4) will make section 15 (3) impossible of application in many instances. That, however, as the court sug-



gests, is a matter for the consideration of Congress.

Thereafter, in a number of annual reports,<sup>11</sup> beginning with its forty-third, in 1929, the Commission recommended to Congress that Section 15 (4) be amended to adopt the construction of the short-haul restriction which it had applied in the *Subiaco* case, and which had been rejected by this Court. In making such recommendation the Commission was concerned with the situation from the shippers' as well as the carriers' standpoint. Thus, it stated in its 43rd Annual Report (p. 79) that the existing situation "is likely to result in substantial nullification in many instances of a statutory provision of great importance to shippers and sometimes to carriers as well." While the Commission recommended, at first, only that the earlier construction of the short-haul restriction be re-established, Commissioner Eastman, chairman of the Commission's legislative committee, subsequently informed a Congressional committee that "upon considering the matter, it seemed to the Commission that there was no reason why there should be any limitation."<sup>12</sup>

<sup>11</sup> See, e. g., 43rd Annual Report, p. 79; 44th Annual Report, p. 79; 46th Annual Report, pp. 36-37, 102; 50th Annual Report, p. 108; 51st Annual Report 106. See also S. Rep. No. 433, 76th Cong., 1st sess., pp. 21-22.

<sup>12</sup> Hearings on H. R. 3400, 76th Cong., 1st sess., before a subcommittee of the House Interstate and Foreign Commerce Committee (p. 5).

Several bills were thereafter introduced in the Seventy-fourth, Seventy-fifth, and Seventy-sixth Congresses, known as "through-route bills," which uniformly would have repealed the short-haul restriction of Section 15 (4) entirely and allowed the Commission to prescribe any through route whenever under Section 15 (3) it was deemed necessary or desirable to do so in the public interest.<sup>13</sup> Extensive hearings before Congressional committees were held on these bills, two of them were reported out to the Senate,<sup>14</sup> and one was passed by that body,<sup>15</sup> but none of these bills was ever finally enacted.

The hearings on these bills disclose that shippers were deeply concerned with them and strongly supported their passage. Thus, Charles R. Seal, acting chairman of the National Industrial Traffic League, one of the largest organizations of shippers, testified as follows at the hearings before the subcommittee of the House Interstate and Foreign Commerce Committee on S. 1261, 75th Cong., 2d sess. (pp. 39-40):

From the standpoint of shippers, it seems to me, power on the part of the Commission to prescribe through routes is almost, if not

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<sup>13</sup> H. R. 5364, 74th Cong., 1st sess.; S. 1636, 74th Cong., 2d sess.; S. 1261, 75th Cong., 1st sess.; S. 1085, 76th Cong., 1st sess.; H. R. 3400, 76th Cong., 1st sess.

<sup>14</sup> S. Rep. No. 1970, 74th Cong., 2d sess.; S. Rep. No. 404, 75th Cong., 1st sess.

<sup>15</sup> S. 1261 passed the Senate on August 10, 1937 (81 Cong. Rec. 8603).

equally as important, as the power to prescribe reasonable rates.

It is highly significant, also, that in the following colloquy at the same hearing he used the words "adequate and efficient transportation", now found in Section 15 (4), from the shippers' viewpoint (p. 41):

Mr. HOLMES: Your organization is primarily interested in cheaper transportation; is that right?

Mr. SEAL: No. We are primarily interested in adequate transportation.

Mr. HOLMES: Well that also applies to cheaper transportation.

Mr. SEAL: Not necessarily. We would not want, I think I may say—although this is partly a personal view—we would not want cheap transportation at the sacrifice of adequate and efficient transportation.

Furthermore, Mr. D. A. Stickell, president of the present complainant before the Commission, appeared at the same hearing in support of the bill and said (p. 42):

I bring these facts to your attention simply to show you the effect which the present law is having on our business. If it had not been for the Subiaco decision [278 U. S. 269], which caused the Interstate Commerce Commission to have to change its position, we would now be, and would have been for many years, able to compete in a much wider territory, and would have

been able to develop our business to a much greater extent than has been possible.

It is our hope that this committee will recommend the enactment of this law.

The general counsel of the American Association of Railroads, Mr. Carter Fort, appeared in opposition to these bills and the following statement by him clearly indicates that the standard railroads were opposed to the bills, not because of the benefits which shippers might derive from them, but because they might result in taking business from the standard roads and giving it to the short lines (Hearings on S. 1636, before subcommittee of Senate Committee on Interstate Commerce, 74th Cong, 2d sess., p. 51):

The CHAIRMAN. Is it not a fact that the shipper is entitled to have the shortest route by which he can get the most efficient service? If I wanted to ship from Montana to New York I ought to be able to ship my goods no matter whether the shipment originated on the Milwaukee or the Northern Pacific or the Great Northern. I ought to be able to have a service which would get my goods there the cheapest way and in the quickest possible time. It might depend a great deal on the character of the freight, of course. I might be shipping some perishable goods, and I might want to get it there a day sooner than the Great Northern can get it there. I am simply using that as an illustration. If a shipment were originated on the Milwaukee

and could be turned over to the Northern Pacific at some point, have I not the right to say that notwithstanding the fact that it originated on the Milwaukee I wanted it to go via the Northern Pacific or some other road so that it would get there a day sooner? It seems to me that this is the public interest that is involved.

Mr. FORT. Senator, if the Commission were limited to such considerations as that, it would be one thing; but under this bill, which uses the broad expression "public interest", the Commission might think it had the right to take into consideration, such considerations as whether a particular short line should have business thrown to it in order that it might obtain revenue. So far as good service is concerned, I am sure that no one would claim that this bill is required by or directed to any such consideration.

That Congress was particularly concerned with the shippers' interests when it was considering these through-route bills is also manifest in the legislative reports made on these bills. Thus in its report <sup>16</sup> on S. 1636, 74th Cong., 2d sess. the Senate Committee on Interstate Commerce said (p. 2):

Your committee feels that the shippers of the country should be given the right to use

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<sup>16</sup> S. Rep. No. 1970, 74th Cong., 2d sess. A similar statement was made by the same committee in its report on S. 1261 at the succeeding Congress. S. Rep. No. 404, 75th Cong., 1st sess., p. 2.



the shortest, quickest, and cheapest routes available, and a representative of the largest shippers' organization in the country appeared at the hearings to urge the passage of the bill.

The through-route bills were never passed, but S. 2009, the bill which ultimately became the Transportation Act of 1940, as reported<sup>17</sup> to the Senate and passed by that body, adopted from the through-route bills the same provisions contained therein which would have removed the short-haul restriction of Section 15 (4) entirely and authorized the Commission to prescribe through routes whenever found to be in the public interest.<sup>18</sup> See Omnibus Transportation Legislation, H. Committee Print, 76th Cong., 3d sess., p. 46. It is perfectly clear from the remarks on the floor of the Senate by Senator Wheeler, the chairman of the Senate Interstate Commerce Committee, who sponsored the bill before the Senate, that he considered the main purpose of this legislation, as it then stood, to be to benefit the shippers. He said (84 Cong. Rec. 6054-6055):

There is no question at all that the shippers of this country have gone on record

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\* <sup>17</sup> S. Rep. No. 433, 76th Cong., 1st sess., pp. 21-22. This report specifically stated that these Sections of the bill "embody changes carried in the through routes bill, S. 1085 [76th Cong., 1st sess.], introduced by Senator Wheeler."

<sup>18</sup> See statement of Senator Wheeler to that effect in explaining subsequent changes made in the bill. 86 Cong. Rec. 11768.

to a very large extent as being in favor of this provision so that they will have an opportunity to take advantage of a shorter route, and will not have to go around Robin Hood's barn to ship their goods. That is all the provision means. It seems to me that if we are passing legislation in the interest of the shipper—and that is what we are seeking to do—and not in the interest of two or three great railroads, we ought to put this provision in the bill.

I know that the Pennsylvania Railroad Co. and some of the other large railroads are opposed to this provision, but regardless of whether or not they are opposed to it, they are evidencing, in my judgment, a very selfish attitude and are taking an untenable position and one to which, to a large extent, the shippers, particularly the smaller shippers are unalterably opposed.

\* \* \* \* \*

What are we legislating for? Are we legislating for merely a few of the large railroads that are prosperous, or are we legislating in the interest of the general public and the shippers? If we are legislating in the interest of the shippers, and want to protect short-line railroads as well as long roads, then it seems to me this is a legitimate amendment and should be adopted.

The Senate bill would have removed the short-haul restriction entirely and the same bill, as originally passed by the House, made no change in that restriction. The present language of Sec-

tion 15 (4) (b) which, of course, retains the restriction but adds an additional exception, was adopted by the Conference Committee (H. Rep. No. 2832, 76th Cong., 3d sess., pp. 70-71). As indicated by Senator Wheeler in discussing before the Senate this amendment made by Section 15 (4) (b), the conference substitute was a "compromise provision on this point" (86 Cong. Rec. 11768).

The construction sought to be placed upon Section 15 (4) (b) by appellants becomes untenable when that Section is viewed in its proper light, as a compromise measure. To construe this language as referring solely to adequacy, economy and efficiency of transportation from the standpoint of railroad operation would be to conclude that the compromise was indeed a hollow one, so far as the shippers' interests were concerned—one that netted shippers practically nothing. Yet it seems unthinkable that in such compromise all Congressional desire to benefit the shippers, so strongly manifest in the earlier proceedings with respect to the through-route bills and S. 2009 which became the Transportation Act, would so suddenly have completely abated. On the other hand, a much likelier compromise and one which would have resulted in the gaining of the shippers' objectives, as apparent in the Senate bill, while at the same time not completely disregarding the countervailing interests of the carriers as protected by the House bill, which did not alter

Section 15 (4) as enacted by the Transportation Act of 1920, is presented if Section 15 (4) (b) is given the Commission's construction. Under this compromise, while the carriers would be required to dispense with their long haul when the Commission found that new through rates were needed to provide adequate and more efficient or more economic transportation from the shippers' standpoint, nevertheless, in return they would gain considerable protection, not furnished by the Senate bill, by virtue of the new prohibition in this Section against the prescription of through routes "for the purpose of assisting any carrier that would participate therein to meet its financial needs." Such a compromise gains much plausibility because the act prohibited was what the Commission had attempted to do in the *Subiaco* case [107 I. C. C. 523], and because it was primarily fear that, under the Senate bill, the Commission would again act on behalf of the short-line carriers which led to the opposition of the long-haul carriers to the attempts to wipe out the short-haul restriction entirely (see pp. 42-43, 45 *supra*). This construction also gains even further plausibility when it is recalled that the words "adequate and efficient transportation" finally chosen had actually been used before a Congressional committee at the hearings on one of the through-route bills by a shipper witness, from the shippers' standpoint.

## II

THE COMMISSION PROPERLY CONSTRUED SECTION 15

(4) AS PERMITTING IT TO COMPARE THE PROPOSED THROUGH ROUTES NOT WITH THE PENNSYLVANIA'S DIRECT ROUTE BUT WITH ITS ROUTE THROUGH HAGERSTOWN

Appellants contend (Br. 68-72) that the Commission, in considering the proposed new routes through Hagerstown, was required, under the language of Section 15 (4) (b), to compare the proposed service on such routes not with Stickell's actually available service over the Pennsylvania route through Hagerstown, but with service on the Pennsylvania's direct route through Harrisburg, not serving Hagerstown. Appellant's contention rests on the provision in Section 15 (4) that the Commission shall not "require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad \* \* \* which lies between the termini of such proposed through route." However, this language is found only in the portion of Section 15 (4) prescribing the general short-haul restriction. It is not found in exception (b) of that Section, under which the Commission can disregard the limitation if it finds that new routes are "needed in order to provide adequate, and more efficient or more economic, transportation." It is submitted that the provision relied upon means only



that a carrier's long haul, subject to protection, embraces the total length of its line between the termini and not just the length of its line after it has obtained possession of traffic under a prescribed through route. This is all that the *Subiaco* case [278 U. S. 269] and the second *Stickell* decision [153 I. C. C. 759] hold. Cf. Br. 69. It would be impossible for the Commission, on the complaint of a Hagerstown shipper, to determine under exception (b) whether a proposed route through Hagerstown would be "more efficient or more economic," either from the standpoint of service to the shipper or from the standpoint of railroad operation, if it did not compare conditions over that route with conditions over existing routes actually available to the Hagerstown shipper, where the only service available to the Hagerstown shipper is by way of Hagerstown. The construction urged by appellants seems so unreasonable that we think it must necessarily be rejected, even if required by the literal language, which it is not. *United States v. American Trucking Association*, 310 U. S. 534, 543.

### III

#### THE COMMISSION'S CONCLUSION IS SUPPORTED BY ADEQUATE FINDINGS AND SUBSTANTIAL EVIDENCE

Appellants' contention (Br. 72-108) that the Commission's report does not contain adequate subordinate findings, supported by substantial ev-

idence, is largely a contention that the report lacks sufficient findings to support the conclusion required under their construction of Section 15 (4) (b). For reasons already given, we believe that the Commission properly construed Section 15 (4) (b) as authorizing it to prescribe through routes short-hauling a carrier when necessary to provide adequate and more efficient or more economical transportation from the shippers' standpoint, and as authorizing it to compare service on the proposed routes with that on the Pennsylvania's route through Hagerstown. Accepting this construction, the Commission's ultimate conclusion, in the words of the statute, that the "two routes sought are needed to provide adequate and more efficient and adequate and more economic transportation" (R. 41) is certainly supported by adequate findings and substantial evidence.

That the service on the present Pennsylvania route through Hagerstown was inadequate and inefficient so far as the shippers were concerned is indicated by the Commission's subordinate finding (R. 40) that in order to meet the demands of its customers for prompt delivery,<sup>19</sup> Stickell, in-

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<sup>19</sup> The demands for prompt service by Stickell's customers and the poor rail service were given by witness Stickell as the reasons for his concern's employing this rail-truck service (R. 219-241); he did not mention as a reason, which appellants assert is the only one (Br. 99), that the grain products were not entitled to move out on the Pennsylvania under the transit tariff.

stead of being able to employ Pennsylvania's all-rail service, had shipped 640 cars from Hagerstown over the Western Maryland and the Reading to Elsmere Junction (Wilmington), thence by truck to points on the Peninsula. Appellants assert (Br. 83-84) that since such rail-truck service was over a route different from those here prescribed by the Commission, the fact that service over such route might be efficient does not indicate that service over the prescribed routes would be more efficient than that over the existing Pennsylvania route. While that may be true, the fact that Stickell was compelled by the poor service on the Pennsylvania route to employ this alternative rail-truck route does at least establish that service over the existing route was inadequate. Besides, the Commission made other findings in which it did compare service on the existing route with that on the proposed routes, which indicate that the proposed routes would be more efficient from the shipper's standpoint than the existing route. Thus it found (R. 36) that—

Based on the fact that the out-of-line and interchange service at Hagerstown would be eliminated, on the fact that a car leaving Hagerstown via the Western Maryland late in the morning arrives at Elsmere Junction (Wilmington) on the Reading the next morning, and on information received from the Western Maryland, complainant estimates that it would save 2

days in reaching destinations in the Del-Mar-Va peninsula if the routes sought were established.

Appellants assert (Br. 80-81) that this statement compared only the service over the respective routes from Hagerstown to destination, rather than over the entire route, and contend that such a comparison is not permitted by Section 15 (4) (b). However, there is nothing in the language of Section 15 (4) (b) which requires a showing that the proposed route must be more efficient "between the termini," even though under Section 15 (4) the Commission must consider a carrier's entire route "between the termini" in ascertaining whether a new route will short-haul it. As the District Court realistically put it (R. 98):

\* \* \* what Stickell is most concerned with is prompt delivery of its products. As to them there is no through movement except in the fictional sense. Of course, Stickell must count upon receiving its grain and grain products with reasonable promptness, so as to have on hand sufficient materials out of which to manufacture its products. But, practically speaking, the time taken for a carload of grain to reach the plant would not control the time when a carload of the finished product would leave the plant. It is the movement from plant to customer that is really at issue.

Moreover, it is plain that the proposed routes would be more economical to the shipper than the present from the Commission's finding (R. 40) that there would be a saving of 4.5 cents per 100 pounds (the out-of-line haul charge) on all grain and grain products moving over these routes.

The above findings thus afford a rational basis for the Commission's ultimate conclusion and they are supported by substantial evidence (R. 203, 218-219, 222, 228-231, 238-241). Clearly the question of what is needed to provide adequate and more efficient or more economic transportation is one of those numerous factual questions entrusted to the Commission's informed judgment, whose conclusion with respect thereto is binding upon the courts if supported by a rational basis and substantial evidence. *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 145-146; *Barringer & Co. v. United States*, 319 U. S. 1, 6-7.

Appellants contend (Br. 74-77) that the Commission's above finding that the proposed routes are necessary to provide adequate service is inconsistent with the Commission's further finding (R. 36) that "There seems to be no question but that the Pennsylvania maintains sufficiently frequent service to meet all reasonable demands and that it can and does furnish adequate facilities to handle any and all grain traffic likely to be given to it at western origins for movement over



its direct routes or over its routes via Hagerstown to eastern destinations." The latter finding means merely that the Pennsylvania operates enough trains at sufficiently frequent intervals to take care of the traffic. Thus read, the finding is not inconsistent with the Commission's finding that the Pennsylvania service from Hagerstown to the Peninsula was inadequate in that it was not sufficiently swift to meet the demands of Stickell's customers for prompt delivery, making resort to other rail and truck service necessary.

There was some evidence offered by the Pennsylvania that even from the shippers' standpoint the service over the proposed routes would not be swifter and therefore more efficient than the service over the present Pennsylvania route. The Commission was entitled to accept instead the contrary testimony of Stickell in this respect, it being the Commission's function to weigh the evidence. *Western Paper Makers' Chemical Co. v. United States*, 271 U. S. 268, 271. Even if it could be held that the Commission erred in concluding that the proposed service was more efficient for the shipper, its order must still be sustained since it is sufficient if the new routes are needed to provide "adequate, and more efficient or more economic, transportation" [italics supplied], and it is indisputable that the new routes are at least needed to provide adequate and more economic service for the shipper.

There was also evidence offered by the Pennsylvania that from the carriers' standpoint the existing route was more efficient and economical from the standpoint of railroad operation than the proposed routes. Assuming this to be true, it would not invalidate the order, since, if the Commission's construction of Section 15 (4) (b) was correct, it was sufficient that the Commission found that proposed service was necessary to provide adequate and more efficient or more economic transportation for the shipper. However, it is evident from the following excerpts from the Commission's report that it properly did not consider the showing made by the Pennsylvania in these respects very convincing (R. 37, 38, 39) :

The Pennsylvania interchanges traffic with the Western Maryland at York [Pennsylvania] and Fulton Junction [Baltimore] only once every 24 hours. Consequently, the interchange tracks at those junctions are now used to near, and sometimes to full, capacity. The limited facilities and operating difficulties encountered at or near those plants are described in considerable detail. The evidence does not show, however, that those conditions are any more difficult than operating difficulties encountered at Hagerstown.

It is the duty of carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. That

requirement of section 3 (3)<sup>20</sup> by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a complaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line. \* \* \*

The Pennsylvania also contends that it is more economical to transport traffic over its direct route and its routes via Hagerstown than it would be to transport it over routes 1 and 2. As evidence thereof, it introduced a cost study based on annual reports filed with the Commission in which the formula used by the Commission's Bureau of Statistics in its Statement No.

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<sup>20</sup> This Section was renumbered 3 (4) by the Transportation Act of 1940 and provides as follows:

All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. (49 U. S. C. 3 (4).)

3812 of March 1938 was followed generally with some variations. That study purports to show the cost of transporting a car of grain weighing 33 tons over the direct routes of the Pennsylvania, its routes via Hagerstown, routes 1 and 2, and other routes between selected points. Among other things, it purports to show that, based on the Pennsylvania's average system costs and the average system costs of the other carriers which would participate in routes 1 and 2, it costs less to transport a car of grain over the Pennsylvania's routes via Hagerstown than it would be to transport it over routes 1 or 2. The Pennsylvania does not contend that the study shows the cost of handling grain to the destinations under consideration but states that it furnishes a "reasonably reliable basis for determining the relative costs of transportation." Even as to relative costs, its value, if any, is limited to average system costs on all less-than-carload and carload freight, while here we are dealing with a heavy loading commodity moving comparatively long distances in well-defined channels. \* \* \*

\* \* \* \* \*

Yet the Pennsylvania, while contending that from the standpoint of operating conditions and operating costs its routes via Enola yard [near Harrisburg] and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently

contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury [Maryland], in addition to the through rates is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not.

Finally, it cannot be said (cf. Br. 84-86) that the Commission in referring, as above indicated, to Section 3 (3), based its decision on that Section or purported to make any order under that Section against the Pennsylvania to compel it to provide reasonable and proper facilities for interchange at York and Fulton Junction. The Commission merely referred to Section 3 (3) as showing that the Pennsylvania could not properly claim that the new routes would be less efficient because of the inadequacy of interchange facilities at those points, in view of the obligation of the carrier to provide proper facilities. The Commission, of course, in any proceeding, whether or not counsel direct its attention to any particular provisions of the Act, is under an obligation to consider of its own motion the effect of any pertinent provision of the Act. See the National Transportation Policy and Section 12 (1). If the Commission intends to make any order actually



requiring the Pennsylvania to improve its facilities, it will certainly give the carrier notice and an opportunity to be heard in that connection. See Sections 1 (14) (a) and 15 (3).

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decree of the district court should be affirmed.

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JANUARY 1945.

## APPENDIX A

Part I of the Interstate Commerce Act, as amended by the Transportation Act of September 18, 1940, 54 Stat. 899.

Section 1 (3) (a) provides in part:

\* \* \* The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. (49 U. S. C. 1 (3) (a).)

Section 3 (4) provides:

All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in

this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III. (49 U. S. C. 3 (4).)

Section 15 (3) provides:

The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without

regard to the provisions of paragraph (4) of this section. (49 U. S. C. 15 (3).)

Section 15 (4) provides:

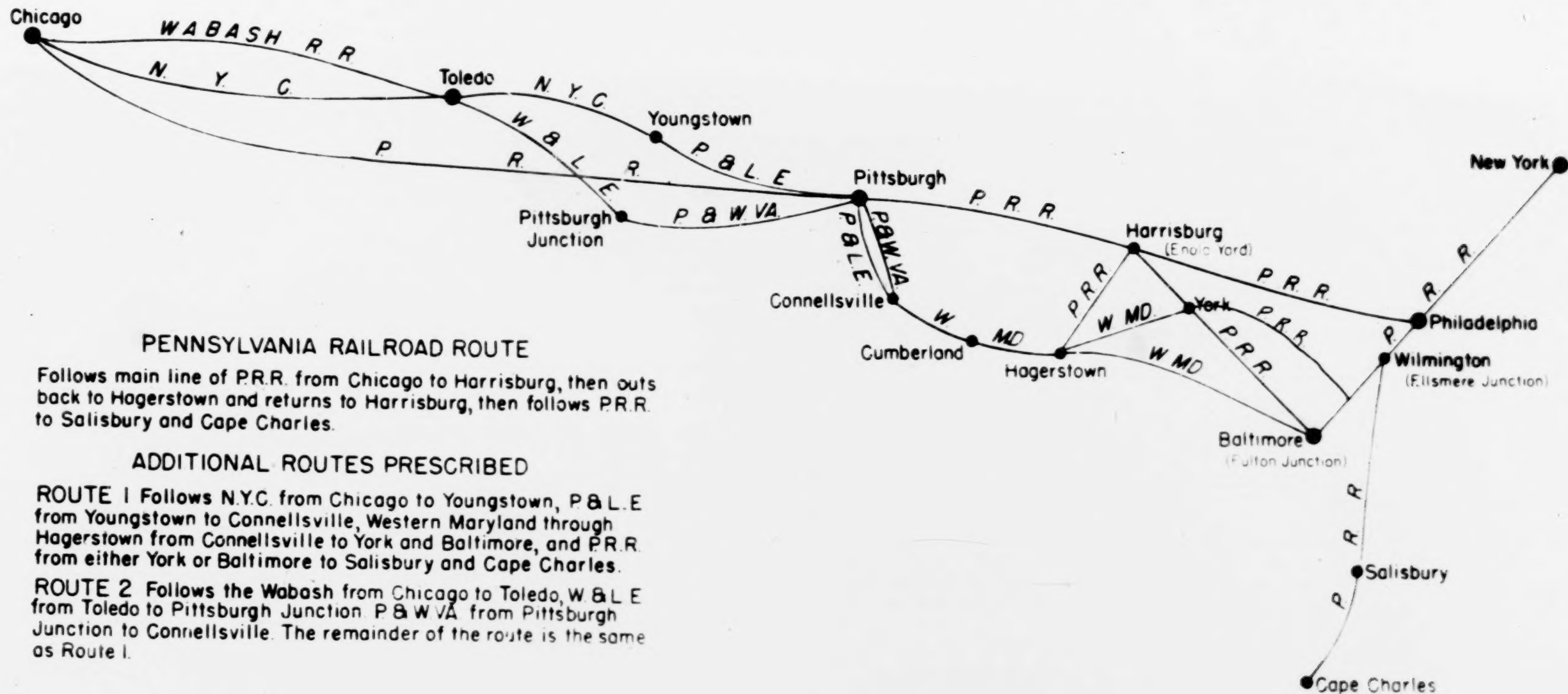
In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route. (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or

other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest. (49 U. S. C. 15 (4).)



# APPENDIX B

## MAP SHOWING ROUTES FROM CHICAGO THROUGH HAGERSTOWN, MD. TO DEL-MAR-VA PENINSULA POINTS (SALISBURY, MD. AND CAPE CHARLES, VA.)





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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944.

No. 182

THE PENNSYLVANIA RAILROAD COMPANY, ET AL.,  
*Appellants.*

*vs.*

UNITED STATES OF AMERICA, INTERSTATE COM-  
MERCE COMMISSION, D. A. STICKELL & SONS,  
INC.,

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND.

BRIEF OF D. A. STICKELL & SONS, INC.

✓ C. R. HILLIER,  
*Counsel for D. A. Stickell &  
Sons, Inc.*

135 South La Salle St.,  
Chicago (3), Illinois,

January 3, 1945.



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INC.,

*Appellees.*

---

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND.

---

BRIEF OF D. A. STICKELL & SONS, INC.,

---

**OPINIONS BELOW.**

The opinion of the specially-constituted District Court for the District of Maryland, *Pennsylvania R. Co. v. United States*, 54 F. Supp. 381, appears in the Record at page 77, and its final decree at page 102.

The report of the Interstate Commerce Commission, Division 2, *D. A. Stickell & Sons, Inc. v. Alton R. Co.*, 255 I. C. C. 333, is set forth in the Record at page 27, and its accompanying order at page 41.

### JURISDICTION.

The jurisdiction of this Court is invoked in accordance with the authority contained in U. S. Code, Title 28, Sections 47a and 345, for the taking of a direct appeal to this Court from the final decree of a United States District Court, made pursuant to the provisions of U. S. Code, Title 28, Sections 41 (28), 43-48, and Title 49, Section 17 (9), refusing to enjoin, set aside, annul, or suspend an order of the Interstate Commerce Commission. The final decree of the District Court was entered on March 22, 1944 (R. 102). Petition for appeal was presented and allowed on May 15, 1944 (R. 108). Probable jurisdiction was noted by this Court on October 9, 1944 (R. 477).

### STATUTE INVOLVED.

The statute here involved is the Interstate Commerce Act, as amended, herein termed the Act, and particularly the provisions thereof which empower the Interstate Commerce Commission to prescribe through routes. 49 U. S. C. Sec. 15(3) and (4). More specifically the case involves the interpretation and application of clause (b) as added to paragraph (4) by the Transportation Act of 1940. (54 Stat. 911-912). Paragraphs (3) and (4) of Section 15, and Section 3(4) referred to in the Commission's decision, are set forth below:

Paragraphs (3) and (4) Sec. 15.

“(3) *The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carrier subject to this part, or by carriers by railroad subject to this part and common*



carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section. (*Italics supplied.*)

"(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) *unless the Commission finds that the through route proposed to be established is needed in order to provide adequate and more efficient or more economic transportation: Provided, However, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates*

*applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs.* In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest." (The portion in italics is the amendment contained in the Transportation Act of 1940.)

The decision of the Commission also refers to Interstate Commerce Act as amended by Transportation Act of 1940, September 18, 1940, 54 Stat. L. 898 (903-904).

Section 3 (4) :

"(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

### STATEMENT OF THE CASE.

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The Complainant before the Interstate Commerce Commission in *D. A. Stickell & Sons, Inc. v. Alton R. R. Co., et al.* (255 I. C. C. 333) (R. 27) is located at Hagerstown, Maryland, where it is engaged in milling and mixing of grain, grain products and grain by-products, and in the manufacture of mixed live stock and poultry feeds. Complainant's mill is located directly upon the rails of the Western Maryland railroad, a direct west to east route passing through Hagerstown. Complainant draws its raw materials generally from territories of production in the West and Middle West. After the manufacturing process at Hagerstown, it ships its products to points of consumption east of Hagerstown. The destination points here involved are stations on the Pennsylvania railroad east of York, Pennsylvania, and Fulton Junction (Baltimore), Maryland, and between New York, New York and Cape Charles, Virginia, principally in what is known as the Del-Mar-Va region (R. 217).

The complaint before the Commission sought the relief that the Commission is empowered to administer under Section 15 of the Act to Regulate Commerce. That Section authorizes the Commission under certain conditions to prescribe through routes "whenever deemed by it to be necessary or desirable in the public interest" for the movement of interstate commerce.

The complaint was fully heard by the Commission, printed briefs were filed, and the case was orally argued before Division 2 of the Commission. Thereafter the Division unanimously entered the following finding:

"We find that the two routes sought are necessary

and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania, or over routes in which the Pennsylvania is a participating carrier via Enola Yard near Harrisburg (R. 41).

"An appropriate order will be entered."

**THE COMMISSION PRESCRIBED THE FOLLOWING ROUTES.**

"(1) From the markets and origins in central territory on The New York Central Railroad Company and its connections other than the Pennsylvania via New York Central to Youngstown, Ohio, Pittsburgh & Lake Erie to Connellsville, Western Maryland to Hagerstown, thence Western Maryland to York or Fulton Junction, and the Pennsylvania beyond; and (2) from the same markets and origins on the Wabash Railway Company and its connections other than the Pennsylvania in central territory via the Wabash to Toledo, Ohio, The Wheeling and Lake Erie Railway Company to Pittsburgh Junction, Ohio, Pittsburgh & West Virginia to Connellsville, Western Maryland to York or Fulton Junction, and the Pennsylvania beyond." (R. 31.)

Thereafter, certain of the railroads petitioned the Commission for reargument and reconsideration, to which petition the complainant replied. The full Commission, upon consideration of said petition and reply, unanimously denied said petition.

Thereupon, the appellants herein filed in the United States District Court for the District of Maryland their petition (R. 3) for an interlocutory and final injunction setting aside, annulling and suspending said order of the Commission, principally upon the ground that the Commis-

sion had erroneously administered Section 15(4)(b) of the Statute set forth hereinbefore, in holding that Clause (b) must be interpreted to mean "adequate and more efficient and more economic transportation" from the shipper's as well as the carrier's standpoint.

No testimony was taken before the District Court, but the case was presented on the record of the proceedings before the Commission which was introduced in evidence (R. 76).

In a carefully considered opinion of twenty-five pages, the District Court concided that the exception embodied in clause (b) "must be interpreted to mean 'adequate, and more efficient and more economic, transportation' from the shipper's as well as from the carrier's standpoint, and that, therefore, the Commission has authority under this clause, to consider and weigh the relative importance of all factors affecting both the shipper and the carrier" (R. 94).

The Court below further concluded that the Commission applied clause (b) in a manner supported by substantial evidence, that such application violates no constitutional rights of the petitioning carriers, and that the petition must be dismissed (R. 102).

Appellants seek an order from this Court reversing the final decree of the Court below and setting aside the Commission's order on the ground, principally, that the issue involved is the proper construction and meaning of clause (b) of Section 15 (4) of the Act, and that the interpretation given this clause by the Commission (See just above), which was sustained by the Court below, is improper and constitutes error of law, in that clause (b) should be applied exclusively in favor of the railroads.

To avoid needless repetition, such additional facts as are necessary to the Argument will be included therein with appropriate record references.



## SUMMARY OF ARGUMENT.

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### I.

THE COMMISSION'S ORDER, WHICH WAS SUSTAINED BY THE DISTRICT COURT, WAS BASED UPON A SOUND ADMINISTRATION OF THE LAW UPON THE FACTS BEFORE IT, AND WAS WITHIN ITS STATUTORY POWER.

Broad discretion is vested in the Commission in a formal proceeding before it to establish through routes whenever deemed by it to be necessary or desirable in the public interest, Section 15(3). The limitation as to short-hauling in Section 15(4), which provides that a carrier may not be required without its consent to embrace in such route substantially less than the entire length of its railroad which lies between the termini of such proposed through route, is immediately followed by Section 15(4)(b) which must be construed in connection with Section 15(3). Section 15(4)(b), coupled with Section 15(3), empowers the Commission to prescribe in the public interest through routes needed by the public in order to provide adequate and more efficient and more economic transportation service. These two provisions cannot be separated, and they together bring the Commission's order herein well within the Commission's statutory power. Moreover, the Commission's exercise of that unit of power in this case is strongly supported by the plain wording of the two sections, and also by the whole purpose and intent of Congress in enacting clause (b), as shown by the proceedings before Congress.

## II.

THE COMMISSION'S ORDER, WHICH THE DISTRICT COURT SUSTAINED, IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Transportation of mixed feed in interstate commerce requires direct, prompt and efficient service. Such service is not rendered upon the existing routes, embracing a lengthy back-haul and delayed service, for which unnecessary and forced service railroads are compelled to assess a substantial extra charge. The routes ordered by the Commission obviate this unnecessary and forced back-haul service which this complainant does not need and does not want.

Out-of-line and back-haul transportation service has been uniformly condemned by the Commission as wasteful, contrary to the national transportation policy and wholly incompatible with present urgent needs for conservation and best use of our transportation facilities.

## III.

THE DISTRICT COURT CORRECTLY DECIDED THAT THE COMMISSION'S ORDER IS SUPPORTED BY PROPER FINDINGS.

This subject is briefly referred to hereinafter, but is amply covered in the brief on behalf of the Government.

## ARGUMENT.

## I.

**THE COMMISSION'S ORDER WHICH WAS CORRECTLY SUSTAINED BY THE DISTRICT COURT, WAS BASED UPON A SOUND ADMINISTRATION OF THE LAW UPON THE FACTS BEFORE IT, AND WAS WITHIN ITS STATUTORY POWER.**

The Commission proceeded under authority given it by Section 15(3) of the statute as follows:

"The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part." (The complete section is set forth hereinbefore on page 2.)

It is important to note the broad discretion thus vested in the Commission, and especially that it is exercised "*in the public interest*," and "whenever deemed by it to be necessary." In considering the limitations in the statute upon the exercise of the above power, the broad power itself should never be lost sight of—this is all important.

The power above described was limited by Section 15(4) by the so-called "short-haul" provision, which provided that a carrier could not be required,

"without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route." (The complete section is set forth hereinbefore at page 2.)

The administrative power of the Commission under Section 15(3) and the limitation upon that power under Sec-

tion 15(4) came before this Court in *United States v. Mo. Pac. Ry.*, 278 U. S. 269, where it was stated by the Court:

"The provision of this paragraph which forbids the commission in prescribing a through route to embrace in that through route substantially less than the entire length of a carrier's railroad which lies between the termini of such route can not be construed as covering only such routes as will deprive the carrier of its long haul after it has obtained possession of the traffic."

In deciding that the then wording of Section 15(4) could not be construed as covering only such routes as will deprive a carrier of its long haul *after it has obtained possession of the traffic*, the court stated at page 278 as follows:

"Inconvenience or hardships, if any, that result from following the statute as written must be relieved by legislation. It is for Congress to determine whether the Commission should have more authority in respect of the establishment of through routes."

Subsequently, by the Transportation Act of 1940, the so-called "short-haul" provision was itself limited so that a carrier may not be short-hauled.

"(b) Unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation." (The complete section is printed herebefore on page 3.)

It is clear from the foregoing that the amendment has now corrected the "inconvenience or hardship" referred to by the Supreme Court, and following the suggestion of the court, Congress has decided that "the Commission should have more authority in respect of the establishment of through routes." (P. 278 of Court's decision.)

Under the amended Section 15(4) the Commission now has authority to remove this "inconvenience and hardship" to the public, including this complainant, specifically mentioned by the Court at page 282 of its decision.

The whole contention of the appellants may be summed up in their claim that the Commission was in error when it stated:

"We interpret that exception (Paragraph (b) of Section 15(4)) to mean adequate and more efficient and more economic from the public or shippers' as well as the participating carriers' standpoint."

The contention of the appellants is that Paragraph (b) of the amendment applies exclusively for the sole benefit of the carriers, and that the Commission is wrong in giving any consideration whatever to the public interest. Bearing in mind that the Commission is here administering its power under Section 15(3) to establish through routes "deemed by it to be necessary or desirable" in the public interest, the Commission was justified, and it may be said that the act required that it be administered in the "public or shippers' interest as well as that of the participating carriers". (R. 40.) Moreover, when a public statute of the United States is enacted by Congress in the exercise of its legislative powers, requiring the Commission to administer said power "in the public interest," it requires some fortitude for any one to argue in this day and age that "public interest" includes himself and excludes others.

Section 15(4)(b) vests in the Commission the power to find upon the record before it whether the through route proposed to be established is needed to provide "adequate" transportation service. The statute does not say adequate facilities. These are two very different words. There may be adequate facilities such as sufficient cars in which to load the traffic, and connecting rails over which the cars may move to destination. But this may not constitute adequate transportation service, as the District Court clearly points out. Especially upon the facts before the Commission comparing a round-about, back-haul service of transportation, with a direct through service of transportation.



The transportation of the mixed feed here involved frequently requires prompt and speedy delivery as will be pointed out in some detail hereinafter.

The statute further vests in the Commission the power in its discretion to find upon the record before it whether the through route proposed to be established is needed to provide "more efficient or more economic transportation." In administering this provision the Commission makes the following pointed statement:

"Yet the Pennsylvania, while contending that from the standpoint of operating conditions and operating costs its routes via Enola Yard and Hagerstown are more efficient and economical than other routes via Hagerstown, inconsistently contends and introduced considerable evidence to show that its 4.5-cent out-of-line charge, approximately 17 percent of the prescribed rate from Chicago to Salisbury, in addition to the through rates *is justified by the out-of-line haul. The justification for a special charge for out-of-line hauls is that routes that require such additional services are not comparable with and are less economical than routes that do not.*" (A: 39.) (Italics supplied.)

In other words, the existing route is so uneconomical and so inefficient that the railroads are compelled to recognize these outstanding facts themselves by adding on an extra charge of 17 per cent in the through rates to cover these unnecessary services not needed by the complainant, and not rendered on the direct routes ordered by the Commission.

The Commission, in the exercise of its authority, is directed to "give reasonable preference in any particular case to the carrier by railroad which originates the traffic", so far as is consistent with the public interest (Sec. 15(4)(b)). It will be noted that on the prescribed routes, the traffic is not originated by the Pennsylvania. The District Court calls special attention to this significant change in the Act in support of the Commission's decision. (R. 89.)

**OUT-OF-LINE AND BACK-HAUL TRANSPORTATION UNIFORMLY  
DISAPPROVED BY THE COMMISSION AS INEFFICIENT AND  
WASTEFUL.**

The decisions of the Commission condemning, as uneconomic, wasteful and inefficient, back-haul transportation, such as exists on the Pennsylvania route here involved, are numerous and are found throughout the Commission's decisions running back through the years. A few of these decisions are listed below: *F. W. Stock & Sons v. Lake Shore & M. S. Ry. Co.*, 31 I. C. C. 150; *Wool Rates Investigation*, 1923, 91 I. C. C. 235; *Grain and Grain Products*, 164 I. C. C. 619; *Out-of-route and Back-haul Charges*, 169 I. C. C. 105; *Malta Mfg. Co. v. Baltimore & O. R. Co.*, 191 I. C. C. 93; *Pillsbury-Astoria Flour M. Co. v. Great Northern Ry. Co.*, 198 I. C. C. 642; and *Traffic Bureau, Lynchburg C. of C. v. Norfolk & W. Ry. Co.*, 237 I. C. C. 408.

In *F. W. Stock & Sons v. Lake Shore & M. S. Ry. Co.*, *supra*, it was said:

The theory of transit is service at some point between the points of origin and destination of the traffic, and in the direction of the movement of the traffic to the point of final destination. A back-haul is contrary to the purpose of transit and should generally be permitted only to meet unusual situations, and when to do so does not result in unjust discrimination or other violations of law.

There is no unusual situation here existing necessitating this substantial back-haul of 148 miles. On the contrary, every consideration of economy and efficiency condemns it, and justifies the direct routes right straight through Hagerstown from West to East on the Western Maryland.

In a recent case, *Oklahoma Grain via Wichita to Memphis*, 248 I. C. C. 767, the Commission again disapproves

back-haul service as wasteful, and emphasizes its evil effects in the present urgent need for conservation and best use of our transportation facilities, as follows:

The movement of traffic for long distances in a direction opposite to final destination, such as here proposed, is, of course, wholly incompatible with present urgent needs for conservation and best use of our transportation facilities.

The Commission there concludes that back-hauls result in "wasteful transportation contrary to the mandate of Section 15a." Moreover, the Commission adds that, "The foregoing provisions of the Act are construed and applied in accordance with the national transportation policy." Therefore, it is quite apparent that the reference to the "national transportation policy" by appellants as being served by forcing traffic over a long back-haul wasteful route rests upon a clear misconception of that Act as correctly administered by the Commission.

"The purpose of transit is to permit service at some point *between origin and destination* of traffic and in the general direction of the movement of the traffic. *A back haul is contrary to this purpose.*" (Italics supplied.)

(*Pillsbury-Astoria Flour Mills Company v. Great Northern Railway Company, et al.*, 198 I. C. C. 642, at page 646.)

"Furthermore, the theory of transit is service at some point between the points of origin and destination of traffic and in the direction of the movement of the traffic to the point of final destination, and transit involving back-haul service should not be required to be established except where it is clearly shown that the failure to do so results in unjust discrimination or other violations of the law. *Stock & Sons v. L. S. & M. S. Ry. Co.*, 31 I. C. C. 150."

(*Wool Rates Investigation*, 1923, 91 I. C. C. 235, at page 284.)

No transportation practice has been more uniformly disapproved by the Commission throughout the years as wasteful, inefficient and uneconomic, than back-hauls, of which the back-haul here involved is a glaring example.

**THE COMMISSION'S ADMINISTRATION OF THE STATUTE IS SUPPORTED BY THE LEGISLATIVE HISTORY.**

The legislative history of the amendment (Section 15 (4)(b)) to the statute is being covered in the brief on behalf of the Government. Mr. Howard Stickell, an officer of the Complainant before the Commission in the instant case testified before the Committees of Congress at the time the amendment was under consideration.

The hearings on these bills evince that shippers were deeply concerned with them and strongly supported their passage. Thus, Charles R. Seal, acting chairman of the National Industrial Traffic League, one of the largest shippers' organizations, testified as follows at the hearings before the subcommittee of the House Interstate and Foreign Commerce Committee on S. 1261 (75th Cong., 2nd session, pp. 39-40):

From the standpoint of shippers, it seems to me, power on the part of the Commission to prescribe through routes is almost, if not equally as important, as the power to prescribe reasonable rates.

It is highly significant, also, that in the following colloquy at the same hearing he used words "adequate and efficient transportation," now found in Section 15(4) from the shippers' viewpoint (p. 41):

Mr. Holmes: Your organization is primarily interested in cheaper transportation, is that right?

Mr. Seal: No, we are primarily interested in adequate transportation.

Mr. Holmes: Well that also applies to cheaper transportation.

Mr. Seal: Not necessarily. We would not want—I think I may say—although this is partly a personal view—we would not want cheap transportation at the sacrifice of adequate and efficient transportation.

Furthermore, Mr. Howard K. Stickell, president of the present complainant before the Commission appeared at the same hearing in support of the bill and said (p. 42):

I bring these facts to your attention simply to show you the effect which the present law is having on our business. If it had not been for the Subiaco decision, which caused the Interstate Commerce Commission to have to change its position, we would now be, and would have been for many years, able to compete in a much wider territory, and would have been able to develop our business to a much greater extent than has been possible.

It is our hope that this committee will recommend the enactment of this law.

The amendment to Section 15(4) resulted from the request of the Commission itself, duly made under Section 21 of the Act, which requires the Commission's recommendation as to "such additional legislation as the Commission may deem necessary." This amendment was necessary to remove the "inconvenience and hardship" to the public referred to by the Supreme Court in *U. S. v. Missouri Pac. R. Co.*, 278 U. S. 269, where this very Hagerstown route is cited by that Court. (P. 282.)

While the bill was being debated on the floor of the Senate (May 24, 1939, 84 Cong. Rec. 6054-5), Senator Wheeler being the Chairman of the Senate Committee on Interstate Commerce and the sponsor of the bill stated:

"There is no question at all that the shippers of this country have gone on record to a very large extent as being in favor of this provision so that they will have an opportunity to take advantage of a shorter route, and will not have to go around Robin Hood's barn to



ship their goods. That is all the provision means. It seems to me that if we are passing legislation in the interest of the shipper—and that is what we are seeking to do—and not in the interest of two or three great railroads, we ought to put this provision in the bill.

“I know that the Pennsylvania Railroad Co. and some of the other large railroads are opposed to this provision, but regardless of whether or not they are opposed to it, they are evidencing, in my judgment, a very selfish attitude and are taking an untenable position and one to which, to a large extent, the shippers, particularly the smaller shippers, are unalterably opposed.”

“Mr. Wheeler. What are we legislating for? Are we legislating for merely a few of the large railroads that are prosperous, or are we legislating in the interest of the general public and the shippers? If we are legislating in the interest of the shippers, and want to protect short-line railroads as well as long roads, then it seems to me this is a legitimate amendment and should be adopted.”

In the light of the foregoing it is apparent that the interpretation of the Commission above set forth and sustained by the District Court, is a faithful administration of Section 15(4) in the public interest and conforms to the will of Congress, as well as the simple wording of the Act itself. Any other interpretation of the amendment would render its enactment a useless effort.

The legislative history of the enactment of Clause (b) furnishes cogent evidence that Congress did in fact empower the Commission in the public interest, to prescribe new through routes which would short-haul a non-consenting railroad, in the exercise of its statutory discretion that the proposed routes will operate in the public interest by furnishing adequate, more efficient and more economical

transportation than the existing route, and that the order is therefore within the Commission's statutory authority.

**THIS COURT HAS HELD THAT THE COURTS ARE NOT AT LIBERTY "TO PRESCRIBE GENERAL ATTITUDES" UPON THE COMMISSION IN THE EXERCISE OF DISCRETION "LEFT TO IT" BY STATUTE.**

The well-ascertained law is that courts are without power to weigh the evidence introduced before the Commission, or pass upon the soundness of the Commission's conclusions. The decisions upholding the foregoing principle are many and we shall only refer to a few of the recent cases. The only instances in which the courts will review findings of fact by the Commission are where the Commission has acted arbitrarily or without evidence to support its conclusion, or has transcended its constitutional or statutory powers. (*Standard Oil Co. v. United States*, 283 U. S. 235; *Interstate Commerce Commission v. Delaware, L. & W. Ry. Co.*, 220 U. S. 235; *United States v. Louisville & N. R. R. Co.*, 235 U. S. 314; *Proctor & Gamble v. United States*, 225 U. S. 282, at pages 296 to 298.)

"It is not for the courts to weigh the evidence introduced before the Commission. And the soundness and reasoning by which the conclusions are reached, or the wisdom of the calculation which prescribes the rates, are matters which are left by Congress to the Commission as the administrative 'tribunal appointed by law and informed by experience.' *Akron, C. & Y. Ry. Co. v. United States*, 22 Fed. (2d) 199. (*Int. Com. Acts Ann.* Vol. 4, page 3170.)

"In a suit to set aside an order of the Commission, where the evidence before the Commission was conflicting and ample to sustain the findings, they are conclusive. *Louisville & N. R. Co. v. United States*, 245 U. S. 463, 62 L. Ed. 400, 38 Sup. Ct. Rep. 141, affirming 225 Fed. 571; *United States v. Louisville & N. R. Co.*, 235 U. S. 314, 59 L. Ed. 245, 35 Sup. Ct.

Rep. 113, reversing *Louisville & N. R. Co. v. United States*, 197 Fed. 58.

"Although the evidence would have warranted a different finding and the first report of the Commission was to the contrary, to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this can not be done. *Manufacturers' Ry. Co. v. United States*, 246 U. S. 457, 62 L. Ed. 831, 38 Sup. Ct. Rep. 383." (Int. Com. Act Ann. Vol. 4, page 3169.)

Whether a route is needed in the public interest is one of those questions of fact that has been confided by Congress to the judgment of the Commission. Its decisions, made the basis of administrative orders operating in *future*, are not to be disturbed by courts except upon a showing that they are unsupported by evidence, were made without hearing, exceed constitutional limits, or for some reason amount to abuse of power. (*Manufacturers' Ry. Co. v. United States*, 246 U. S. 457, 62 L. Ed. 831, 38 Sup. Ct. Rep. 383. Int. Com. Acts Ann. Vol. 4, page 3168.)

In a recent case (December 6, 1943) a District Court set a Commission's order aside. (*I. C. C. et al. v. Hoboken Manufacturers' R. R.*, 64 Sup. Ct. 159.) The Court said, reversing the District Court, that the Commission's determination "is an administrative finding which, if supported by evidence is conclusive on the Courts."

In *Mississippi Valley Barge Co. v. United States* (292 U. S. 282, 286) the Supreme Court holds:

"The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body."

In *I. C. C. v. Inland Waterways Corp.* (319 U. S. 671, 691) the Supreme Court in reversing a District Court holds:

"Our function does not permit us either to pre-

scribe or approve rates, and our decision carries no implication of approval of any rates here involved. *Nor are we at liberty to prescribe general attitudes the Commission must adopt towards the exercise of discretion left to it rather than to courts.* We decide only whether the Commission has acted within the power delegated to it by law. We are of opinion that it has and that the decision of the court below must be

**Reversed."** (*Italics supplied.*)

In view of the somewhat novel argument of appellants, seeking to impose meticulous limitations upon the Commission in the exercise of its discretion in administering the broad powers conferred upon it by Section 15 of the Act, the expression of the Court in the decision cited above, that the Courts are not at liberty to "prescribe general attitudes" upon the Commission in the exercise of its discretion "left to it" by the statute, seems peculiarly applicable in this case.

We shall point out hereinafter that the decision and order in the case here before the Court contain none of the infirmities recited in the foregoing decisions, and that therefore the decision of the District Court should be affirmed.

The reference in the Commission's decision to Section 3(4) of the statute, which section is printed hereinbefore under "statutes involved," is correctly disposed of by the District Court, as follows:

"What the Commission said on this point is as follows (255 I. C. C. at 341): 'It is the duty of carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and connecting lines. That requirement of Section 3(4) by necessary implication means that such interchange facilities must be adequate to handle all traffic that may reasonably be expected to require interchange at such points. It is no defense to a com-

plaint seeking through routes necessary and desirable in the public interest to show that a carrier has failed to perform its duty to establish such facilities and that by reason of that neglect of duty it is more convenient from an operating standpoint for it to haul traffic 149 miles out of line.' This is a correct interpretation of the law." (R. 101.)

## II.

### **THE COMMISSION'S ORDER, WHICH THE COURT BELOW CORRECTLY SUSTAINED, IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

It will be noted from the Statutory provisions here involved that no attack has been made upon any rates or back-haul charges, either that they are unreasonable in violation of Section 1 of the Act, or that they are unjustly discriminative under Section 3 of the Act. *The repeated claim or inference of appellants to the contrary rests upon a clear misapprehension of the very nature of this case.*

The shipper accepts the existing through rates applying upon this traffic from the origin of the raw materials, grain and grain products, in the region of production in the Middle West, to the final destinations on the Pennsylvania Railroad in the Del-Mar-Va region. These rates are the same in amount as the rates paid by Complainant's competitors located at various points on the through routes of transportation from the West to the East upon which rates there is a substantial movement of mixed feed. (R. 203.)

The order of the Commission simply requires through movement of traffic from the Western producing points, directly through Hagerstown on the Western Maryland Railroad and on to the Del-Mar-Va region served by the Pennsylvania, over the two routes specified in its order.



at the going through rates that have applied generally on similar traffic for many years. In other words, the order merely requires through efficient and direct transportation service, the primary function for which these railroads were organized and authorized to perform.

**THE TRANSPORTATION OF MIXED FEED IN INTERSTATE COMMERCE REQUIRES DIRECT, PROMPT AND EFFICIENT SERVICE.**

The manufacture and distribution of mixed feed is a volume or quantity operation. Hence, the principal items entering into the delivered cost are the raw materials, grain and grain products, which must constantly move in carloads, and the freight charge upon relatively heavy tonnage. The margin of profit upon a ton of feed is very small, and therefore, the addition of but a few cents per 100 pounds to the going through rate to a given market prevents the sale against a competitive movement at the going through rate. (R. 79.)

For example, the Del-Mar-Va region here involved can be and is served by numerous feed manufacturers at the going through rate located at many points such as Buffalo, New York, Fort Wayne and Indianapolis, Indiana, Cincinnati, Toledo, Cleveland and Akron, Ohio, Pittsburgh, Lancaster and York, Pennsylvania (R. 32), without any additional charges being added to the through rates. (R. 203.)

Hagerstown is well located for the manufacture of mixed feeds on the through routes, between the grain producing regions of the West and the consumers of the East. Complainant, for many years, has had through routes from the West to the East reaching the regions East of Hagerstown, as far as New England on the through rates without any back-haul charge because there is no back-haul. This

traffic flows over the very routes from the West through Hagerstown on the Western Maryland Railroad here covered by the Commission's order in this case. (R. 217.)

"A through route is an arrangement, expressed or implied, between connecting railroads for continuous carriage from a point on the line of one to a destination on the line of the other." *Quannah, A. & P. Ry. Co. v. Atchison, T. & S. F. Ry. Co.*, 211 I. C. C. 389, 390-391.

Transit arrangements are maintained by the several railroads at Hagerstown whereby complainant receives its inbound materials, mixes them into feed, and ships its products to destination at the same rate (plus a transit charge) as if there had been a through shipment of the manufactured product direct from origin to destination. This is the usual transit practice generally employed in the transportation of grain, grain products and mixed feed throughout the country.

One of the natural markets for complainant should be the Del-Mar-Va region lying immediately East of Hagerstown. This region is served only by the lines of the Pennsylvania railroad, which will not let complainant into said markets unless the tonnage moves into and out of Hagerstown over its expensive back-haul route through Harrisburg hereinbefore described, including 74 miles out of line or 148 miles for the back-haul, plus the extra switching and other services. For the round-about service via its route, to compensate it for this service, wholly unnecessary on the two routes prescribed by the Commission, an additional charge is made by the Pennsylvania of 17 per cent on top of the going through rates.

The complainant is simply asking for what his competitors already have (R. 207, 210, 213). He merely wants to be "on the same basis" with what is freely extended to his competitors (R. 220). The proposed routes will make

"quicker time and the service is more efficient and economical" (R. 222, 225, 228). The net saving time will be two days. (R. 95, 239.)

In order to get away from this wasteful and inefficient service above described, the order of the Commission prescribes the two direct routes from the producing regions of the West directly through Hagerstown on the Western Maryland and on East to the the Del-Mar-Va region. The Commission describes these direct routes as follows:

"The routes sought up to Hagerstown are well established and generally accepted as reasonable by shippers and the carriers parties thereto to points in eastern territory. There is no showing or contention that those routes would be less economical as parts of the through routes sought to destinations considered on the Pennsylvania than to destinations on the other carriers in eastern territory. The routes sought in connection with the Pennsylvania (in the Del-Mar-Va region) would not only not result in any cross hauling or wasteful transportation, but they would eliminate a 149-mile out-of-line haul and two switching interchanges at Hagerstown and would relieve the Pennsylvania from the expense of maintaining transit and absorbing the switching charges at Hagerstown. The Western Maryland would bear all the transit and switching expenses at that point."

*The Western Maryland did not oppose the complaint.*  
(R. 28.)

This case presents railroad regulation at its best. Here is a shipper in interstate commerce who does not complain of any rate or any charge. He simply seeks reasonable through service at the going rates now open to competitors. This complaint is aptly described by the Supreme Court in *Peoria Ry. v. U. S.*, 263 U. S. 528 at 535 where the Court says that to receive and transport shipments coming from a connecting carrier is a "*Primary Duty of a Carrier.*" (Italics supplied.)

The Pennsylvania controls the delivering points, and insists upon forcing this traffic over its back-haul route so that it can collect the entire through rate, plus its back-haul charges for a back-haul service that complainant does not need and does not want.

The amended Section 15(4), enacted at the request of the Commission, is especially designed to remove what the Supreme Court describes as the "*inconvenience and hardship*" to the public, in *United States v. Mo. Pac. R. Co.*, 278 U. S. 269.

**THE RELIEF SOUGHT BEFORE THE COMMISSION WAS FOR  
DIRECT, PROMPT, EFFICIENT SERVICE.**

Not only is the present back-haul route uneconomical and inefficient in that its unnecessary round-about service requires a 17 per cent increase in the through rates to compensate the Pennsylvania for such service, but this route has the further infirmities pointed out by the Commission in its decision (R. 36, 40), such as adding two days' time in reaching destinations. That "in order to meet the demands of customers for prompt delivery complainant shipped 640 carloads from Hagerstown over the Western Maryland and the Reading to Elsmere Junction, thence by truck to points on the Del-Mar-Va peninsula." (R. 219, 222, 224, 228, 241.)

Since the record before the Commission was closed, the claim is made that this substantial movement by truck, made solely in order to secure prompt service demanded by consumers, was due to a lack of transit tonnage at Hagerstown upon which to continue the rail service. This claim has been improperly injected into this case since the record before the Commission was closed. Therefore, we are not called upon to answer it. However, the transit records of complainant show that via the Pennsylvania

route there was always a large surplus of transit rail billing when these 640 carloads were shipped by truck. This truck movement was purely to avoid the slow service over the inefficient back-haul route. The claim of appellants is therefore wholly erroneous.

The mixed feed business requires prompt and efficient delivery to consumers and the complainant is here seeking the most direct routes to save mileage and to make quick deliveries (R. 241). The assertion that complainant is merely seeking to avoid back-haul charges (which is certainly within his rights as found by the Commission) is shown from the above description of poor service on the existing route to rest upon a misapprehension of the facts before the Commission when it ordered the two direct and more efficient routes. (R. 36, 40.)

**THE PRESENT ROUTE FROM THE WEST TO THE DEL-MAR-VA REGION IN THE EAST, VIA THE PENNSYLVANIA ROUTE THROUGH HAGERSTOWN IS INADEQUATE, INEFFICIENT AND UNECONOMICAL, BOTH TO THE RAILROADS AND TO SHIPPERS AND RECEIVERS DEPENDANT THEREON.**

The present Pennsylvania route from the grain producing regions of the West to the mixed feed consumers located in the Del-Mar-Va region east of Hagerstown is 1041 miles in length. (The distances given herein are between Chicago, Illinois and Salisbury, Maryland, as representative). This route requires an unnatural and expensive back-haul movement of 148 miles. In the transportation of interstate commerce, nothing can be more wasteful or inefficient than a back-haul route requiring the same shipment to move a relatively long distance over the same rails in opposite directions.

A glance at the map attached to the brief on behalf of the Government illustrates this uneconomical and ineffi-



cient service. It shows the Pennsylvania route eastbound from the west stopping abruptly at Harrisburg, and then moving 74 miles in a *southwesterly direction to Hagerstown*. From Hagerstown the route retraces itself over the same rails to Harrisburg, and then on to destinations east of Harrisburg.

In addition to this uneconomical back-haul service, this existing Pennsylvania route requires costly delays, switching and terminal services in breaking up through trains from the west at Harrisburg; the diversion of the shipments to the back-haul branch line which travels southwest 74 miles from Harrisburg to Hagerstown. The same expensive process is repeated in moving the shipment on from Hagerstown 74 miles back-haul through Harrisburg to the Del-Mar-Va region. (R. 218 *et seq.*)

Added to all of the foregoing delays and inefficiencies, there is the important fact that complainants' mill at Hagerstown is located on the Western Maryland rails, and not upon the Pennsylvania rails. This entails additional delays and terminal services in switching the cars from the Pennsylvania to the Western Maryland tracks, and from the Western Maryland back to the Pennsylvania at Hagerstown for the branch line back-haul movement north from Hagerstown to Harrisburg. (R. 218) All of the foregoing details of costly service and delays are absent when the shipments flow directly through Hagerstown on the direct routes prescribed by the Commission between the West and East via the Western Maryland Railroad, which through routes "are well established and generally accepted as reasonable by shippers and the carriers, parties thereto, to points in eastern territory." (R. 32)

The Pennsylvania finds all of this branch line back-haul and switching service so costly to it that it adds 17 per

cent to the through rate from West to East to pay for said extra service, all of which unnecessary service is obviated by the routes ordered by the Commission in this case, and which service is not needed or wanted by complainant.

In referring to this inefficient back-haul route in *D. A. Stickell & Sons, Inc. v. W. M. Ry.*, (146 I. C. C. 609), the Commission concludes that it can hardly be called a through route:

“They can hardly be called a through route where the traffic moves in and out of Hagerstown over the same line and the joint rate applies only with the addition of a back-haul charge for the out-of-line movement.” (614)

“A route requiring such service and a special charge therefor is obviously *in a class by itself and is not comparable with the routes which require no out-of-line service or special charge therefor.*” (Emphasis supplied.) (615)

**THE DIRECT WEST TO EAST ROUTES ORDERED BY THE COMMISSION ARE ADEQUATE, MORE EFFICIENT AND MORE ECONOMICAL THAN THE PRESENT BACK-HAUL ROUND-ABOUT ROUTE VIA THE PENNSYLVANIA RAILROAD.**

In contrast with the foregoing facts as to the indirect and unnatural route of the Pennsylvania via Hagerstown, attention is invited to the two direct routes named in the Commission's order. (R. 31.) Over new route 1 ordered by the Commission, the distance is 946 miles via Fulton Junction (Baltimore), and via York, 958 miles; and over route 2, via Fulton Junction (Baltimore), 938 miles, and via York, 950 miles. They are well-established routes over which vast tonnage has moved for years between the West and the East. One route is known as the “Pittsburgh Dispatch” and the other as the “Wabash route”. They are direct tariff routes flowing right through Hagerstown, and the complainant's Mill is located right on the

rails of the Western Maryland, which carrier performs all switching service at Hagerstown. (R. 230.) The terminal services are simple and quick of operation. (R. 229.) Over the Pennsylvania route the distance is 1041 miles. (The routes and distances are shown on Exhibit 5, printed as an appendix to this brief. R. 359.)

The frequent need for speed in making deliveries of mixed feed from Hagerstown to the consumers on the Eastern shore is set forth in the record before the Commission. As representative of the record it is testified that "The customers will often call us in the evening and want their feed the next day." The inefficiency and inadequacy of the service on the Pennsylvania route involves a delay of two days. Many factors enter into the feeding of live stock and poultry for the market that demand a quick movement of feed. (R. 241.)

In order to overcome the delay and disability on the Pennsylvania route it is frequently necessary to ship the feed out from Hagerstown over the Western Maryland and the Reading Railroad to the station nearest the Eastern shore and deliver thence by truck. As the Commission finds, hundreds of carloads are moved in this way, due solely and entirely to the delays and inefficiency of the Pennsylvania route. (R. 40)

The two routes ordered by the Commission are in general use today, except as they are arbitrarily restricted by the Pennsylvania tariffs to exclude traffic not received by it West of Pittsburgh, and destined to the consumers located upon its lines in the Del-Mar-Va region. This region is controlled absolutely by the Pennsylvania. The stations are local to its lines and that carrier is in a position to exercise a monopoly power upon traffic there destined. Referring to this restriction in the use of the two routes it prescribes the Commission states as follows:

"It is not the province of railroads to determine what markets shall be available to sellers or buyers, or,

by the refusal to establish through routes or the maintenance of rate disadvantages, to restrict or circumscribe the opportunities of shippers located on other railroads to sell in markets served by them. It is their function to transport in the channels necessitated by trade conditions and not to fix limitations on commerce. The public interest demands that all shippers be accorded relatively equal opportunities to reach all reasonably available markets." (R. 32)

From the foregoing summary of the evidence before the Commission, and the references thereto in the Commission's report, as pointed out, it is apparent that there was substantial evidence supporting the findings and order with respect to the administration of Section 15(3) and Section 15(4) of the Act. Upon such record the Commission after full hearing exercised the discretion conferred upon it by Congress in a proper and lawful manner, as found by the unanimous decision of the District Court after an ample presentation to that Court. (R. 77.)

**AVERAGE SYSTEM COSTS HAVE NO APPLICATION TO THIS  
KIND OF A CASE.**

The railroads offered certain figures as to relative average costs of service. The Division carefully considers this evidence and points out its lack of value in this case. (R. 77.) This evidence is a comparison based on the average system costs of handling all traffic over the three routes here involved.

Moreover, when it comes to using average system costs, the average system costs on all traffic are made up of many hundreds of different commodities moving in different kinds of equipment, some of it very costly (ours moves in box cars); some of it loading up to 100,000 pounds per car while others load but a small fraction of that amount (ours loading above the average) (R. 217); some of it

moving long distances and others but a few miles (ours moving from the grain fields of the west to the seaboard); some of it requiring special and costly service, while others require but a minimum (ours requires ordinary service); some of it entailing material loss and damage claims while others have practically none (the record shows ours are practically zero) (R. 217); some of it seasonal, while others move regularly throughout the year (ours moving day in and day out); and many other such items not necessary to enumerate. This attempted application of average system costs on all traffic to a single commodity therefore cannot be done with the hope of obtaining a worthwhile comparison.

The above factors prove the truth of the statement of the Commission in *Sugar from Key West to Jacksonville*, 112 I. C. C. 347 that it is difficult, if not impossible, to ascertain "the cost of transporting a particular kind of traffic for a certain distance."

And again, in *Sloss-Sheffield Iron Co. v. L. & N. R. R. et al.*, 30 I. C. C. 597:

"The difficulty is appreciated of even fairly approximating the cost of transporting a unit of freight. Any method employed must necessarily be somewhat arbitrary."

With the foregoing ever-present frailties of cost studies in mind, the attempted application of such evidence to a particular situation as here presented is shown to be honeycombed with inconsistencies. Applying an average cost, itself the result of arbitrary formulas and averages on a vast railroad system, to a comparatively insignificant operation as is here attempted, the result is not even a "mere approximation" of anything.

"Cost studies based upon the average cost of handling all traffic cannot be accepted as showing cost of



tonnage of a particular commodity or class of commodities." (*California Growers & Shippers League v. S. P. Co. et al.*, 129 I. C. C. 25.)

Again, when an attempt is made, as here, to compare average costs of one railroad with the average costs of another railroad, when there is no showing of substantially similar circumstances and conditions of terrain served or commodities handled, volume of traffic, efficiency of managements, or many other really controlling factors, the use of any such attempted comparisons to defeat the administration of Section 15 of the Act seems inartificial. And that is the basis of the cost evidence offered herein. The purported average costs shown bear no relation whatever to the traffic here involved, which entails a wasteful back-haul service, so expensive as to require a substantial extra charge to cover it.

### III.

#### **THE DISTRICT COURT CORRECTLY DECIDED THAT THE COMMISSION'S ORDER IS SUPPORTED BY PROPER FINDINGS.**

The District Court sets forth in some detail the findings of the Commission (R. 94), all of which are summed up by the Commission in its ultimate finding, as follows:

"We find that the two routes sought are necessary and desirable in the public interest and that they are needed to provide adequate and more efficient and adequate and more economical transportation and should be established, subject to the lowest through rates contemporaneously maintained on the same commodities from the same origins to the same destinations over the direct routes of the Pennsylvania or over routes in which the Pennsylvania is a participating carrier via Enola Yard near Harrisburg. (R. 41.)

"An appropriate order will be entered."

The District Court correctly finds that the Commission's order is supported by essential and basic findings. This subject is amply covered in the brief on behalf of the Government.

### CONCLUSION.

This case presents railroad regulation in the simplest and clearest sense of that expression in the Act to Regulate Commerce. Here is a shipper in interstate commerce that is merely requesting service over well-established existing routes. It accepts without complaint the going rates that its competitors pay. *In fact it is not seeking either service or rates that are not freely accorded its competitors.* (R. 207, 213). Complainant's situation is aptly described by the Supreme Court in *Peoria Ry. v. U. S.* (263 U. S. 528, 525), where the Court says that to receive and transport shipments coming from a connecting carrier is a "primary duty of a carrier." Section 15(4) of the Act was specifically amended by Congress to remove what this Court describes as the "inconvenience and hardship" to the public. *United States v. Mo. Pac. R. R.* (278 U. S. 269, 278).

For the reasons set forth herein, it is respectfully requested that the decree of the District Court be affirmed.

C. R. HILLYER,

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135 South LaSalle Street  
Chicago (3) Illinois

January 4, 1945.

## Appendix.

Docket #28647 (R. 359)

D. A. STICKELL &amp; SONS, INC., HAGERSTOWN, MD.

## EXHIBIT No. 5.

New York City is representative of destinations on the Pennsylvania R. R. in New Jersey and Eastern Pennsylvania. Salisbury, Md., is representative of destinations on the Eastern Shore of Maryland, Delaware and Virginia.

Route	From	To New York Miles	To Salisbury Miles	Rate on Grain Products
A	Chicago	966	934	.26½
B	"	975	943	.26½
C	"	1054	1041	.26½ plus 4½ cents
A	St. Louis	1162	1130	.30½
B	"	1154	1122	.30½
C	"	1197	1184	.30½ plus 4½ cents
E	Decatur, Ind.	840	808	.30½
F	"	797	765	.30½
C	"	927	914	.30½ plus 4½ cents
A	Peoria, Ill.	1190	1158	.28½
D	"	1132	1100	.28½
C	"	1205	1192	.28½ plus 4½ cents

Route A—N. Y. C. R. R. Youngstown, Pa.—P. & L. E. Connellsville, Pa. W. M. Ry. to York, Pa. or Baltimore, Md.—P. R. R. to Destination.

Route B—Wabash R. R. to Toledo, O.—W. & L. E. to Pittsburg Jet. Pa. P. & W. V. to Connellsville, Pa.—W. M. Ry. to York, Pa. or Baltimore, Md.—P. R. R. to Destination.

Route C—P. R. R. to Destination with back-haul from Harrisburg, Pa. to Hagerstown, Md.

Route D—T. P. & W. R. R. to Forrest, Ill.—Wabash and Route E.

Route E—N. K. P. R. R. to Toledo, Ohio and Route A.

Route F—N. K. P. R. R. to Bellevue, O.—W. & L. E. to Pittsburg Jet., Pa. P. & W. V. R. R. to Connellsville, Pa.—W. M. Ry. to York, Pa. or Baltimore, Md.—P. R. R. to Destination.

Note 1—Route C includes a back-haul of 146 miles between Harrisburg, Pa. and Hagerstown, Md., and adds 4½ cents or 90 cents per ton to the through rate.

Note 2—All routes except C are requested routes, but are standard used routes as far as Baltimore, Md., or York, Pa.

Note 3—All rates are reshipping rates except from Decatur, Ind.

Tariff Authority: Jones 245 G—I. C. C. 3356.

Jones 470 B—I. C. C. 3490.

Transit tariff, P. R. R. 1272 C—I. C. C. 2442.

Transit tariff, W. M. Ry. I. C. C. 8662.



# SUPREME COURT OF THE UNITED STATES.

No. 182.—OCTOBER TERM, 1944.

The Pennsylvania Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, et al., Appellants,

vs.

The United States of America, Interstate Commerce Commission, D. A. Stickell & Sons, Inc.

Appeal from the District Court of the United States for the District of Maryland.

[January 29, 1945.]

Mr. Justice ROBERTS delivered the opinion of the Court.

This is an appeal from a decree<sup>1</sup> of a District Court of three judges dismissing the petition of the appellants, thirteen trunk line railroads, for an injunction annulling an order of the Interstate Commerce Commission,<sup>2</sup> which required the railroads to establish and maintain two through routes.

The Commission's order was made after hearing upon a complaint of D. A. Stickell & Sons, Inc., a manufacturer of mixed feeds at Hagerstown, Md. This concern obtains its inbound raw material of grain and grain products, etc., from manufacturing plants located in so-called central territory. These are mixed and the mixed aggregate moves from the plant at Hagerstown to points eastward, but principally to the so-called Del-Mar-Va Peninsula, a portion of Delaware, Maryland, and Virginia, which is served solely by the Pennsylvania Railroad. Hagerstown lies on the main li. of the Western Maryland Railway. The Pennsylvania serves it by a branch line running from Harrisburg, Pa., to Winchester, Va., and the Baltimore & Ohio by a branch line running north from its main line at Weverton, Maryland. The railroads accord transit facilities at Hagerstown whereby Stickell may receive the inbound materials, mix them, and ship the products to destination on a through rate plus a transit charge as if the move-

<sup>1</sup> 54 F. Supp. 381.

<sup>2</sup> D. A. Stickell & Sons, Inc., v. Alton R. Co., 255 I. C. C. 333.



ment had been a through one from origin to destination. The handling of freight moving over the Pennsylvania Railroad will illustrate the problem. The so-called back-haul, or out-of-line haul, required to reach Hagerstown from the Pennsylvania's main line is 74.5 miles in each direction and the additional charge for it is 4.5 cents per cwt., or about 17% of the through rate. Interchange and switching operations to reach the Stickell plant are performed by the Western Maryland and the Pennsylvania absorbs these charges. The Commission's order established two new through routes which included the Western Maryland, the line which serves the Stickell plant. Both reduced the Pennsylvania's line haul to that portion of the routes eastward of York, Pa., or Fulton Junction (Baltimore), Maryland, in respect of shipments to the Del-Mar-Va Peninsula, thus depriving the Pennsylvania of a long haul from points west of Pittsburgh, Pa., through Harrisburg, Pa.

The gravamen of Stickell's complaint before the Commission was that the back-hauls involved in existing routes delayed its shipments and, while the charge for such back-hauls was reasonable, the addition of this charge to the through rate cut into its margin of profit, which is small. These factors, it claimed, deprived it of its rightful competitive relation to other manufacturers of mixed feed.

The Commission's authority to grant relief is bottomed on § 15(3) and (4) of the Interstate Commerce Act as amended.<sup>3</sup> The subsection first mentioned authorizes the Commission, when it deems it to be "necessary or desirable in the public interest" to establish through routes and joint rates. The succeeding subsection is a limitation on the Commission's power, derived in part from earlier enactments, prohibiting the Commission from requiring a line-haul carrier to short-haul itself as a participant in a prescribed through route. The earlier part of the paragraph retains the prohibition against short hauling but contains exceptions, one of which, designated (b), is "unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: . . .". The principal controversy in the cause turns on the proper interpretation of the quoted exemption from the general prohibition of through routes which involve short hauling. There are certain subsidiary issues which will be noticed.

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<sup>3</sup> 49 U. S. C. § 15(3)(4).

The opposing views of the parties may be summarized. The appellants argue that the phrase "adequate, and more efficient or more economic, transportation" refers to carrier operations and expense and has no reference to the broader public interest which embraces service to shippers and the rates they pay. The appellees urge that the phrase comprehends the adequacy of service, its cost to the shipper, and the convenience, efficiency, and cost of the carriers' operations. The Commission took the latter view. In its decision it purported to consider all these elements and, on appraisal of them, concluded the two routes it prescribed were justified by § 15(4). The court below sustained the Commission. We think its judgment was right.

Without reciting in detail the statutory history, which is given in full in the opinion below, it will suffice to say that the Commission originally construed the short-haul provision of the Interstate Commerce law as protecting only the haul of the originating carrier. In *United States v. Missouri Pac. R. Co.*, 278 U. S. 269, this construction was overruled. Decision was handed down after the Commission had made an order on an earlier complaint of Stickell, similar to the order here involved;<sup>4</sup> but, after this court's decision, the Commission set aside the order in conformity to our opinion. Several unsuccessful attempts were thereupon made to induce Congress to repeal the short-haul prohibition. When the 1940 amendment to the Interstate Commerce Act was on its passage, the short-haul prohibition was eliminated by the Senate. The House retained the provision without change.

In conference § 15(4) was amended by permitting the Commission to require a carrier to short-haul itself under the conditions specified in the language we have quoted. Thus the two sections—15(3) and (4)—since 1940 have provided that the Commission may establish a through route if found to be "in the public interest" but may not establish such a route which requires a carrier to short-haul itself unless it finds that the route will provide adequate, and more efficient or more economic, transportation. The appellants suggest that if the latter phrase be construed as the Commission has construed it the two sections taken together will be redundant for subsection (3) permits the establishment of a through route only if it is in the public interest, and the short-haul provision may be disregarded only if so to do

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<sup>4</sup> *Stickell & Sons v. Western M. Ry. Co.*, 146 I. C. C. 609.

would be in the public interest. But we think this is not a fair construction of the statute. It is conceivable that the Commission might refuse to establish many through routes as not required in the public interest where short hauling is not involved. On the other hand, if the Commission is asked to abrogate the general rule with regard to the short-haul, the statute says it must have regard to several matters. The first of these is adequacy of transportation. The expression would seem to apply only to the interest of the shipping public. The second and third matters to be considered are efficient and economic transportation. These expressions may well embrace both shippers' and carriers' interests. Congress had a purpose in amending the provision, and we think the Commission was not in error in construing the language used as evincing an intent that both interests should be considered and a fair balance found.

The appellants refer to legislative history, to the policy declared in the Interstate Commerce legislation, to the definition of transportation in the statute, and other aids to construction, in support of their argument. These were, in our view, adequately discussed by the court below. We have considered them but they do not persuade us that the Commission and the District Court were wrong in their interpretation of § 15(4).

The appellants contend that even if the Commission was right in its interpretation of its statutory authority, its over-all conclusion is not supported by evidence or by the subsidiary findings. The claim is that the Commission did not make findings that the expense and inconvenience to the carriers concerned of rendering services over routes involving four, five, or six railroads, with the consequent interchange of traffic, would not be inordinately expensive and burdensome, and they point to certain evidence offered before the Commission which they say the Commission ignored. In the court below the same contention was considered and overruled. True, the Commission's findings are not sharp and clear on the point, but the matter was not ignored and the Commission's decision refers to it. We are unable to say that there was not sufficient in the record before the Commission, and in its findings, to justify the conclusion that the Commission, as it says it did, weighed the evidence and found that the balance was in favor of the order made.

*Judgment affirmed.*

